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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 555

MONAMOTOR OIL COMPANY, APPELLANT,

vs.

RAY E. JOHNSON, TREASURER OF THE STATE OF IOWA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA

FILED OCTOBER 27, 1933

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[fol. 2½] [Caption omitted]

[fol. 3] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

In Equity

Mona Motor Oil Company, a Corporation, Complainant,

vs.

Ray E. Johnson, Treasurer of the State of Iowa; John Fletcher, Attorney General of the State of Iowa; J. J. Hess, Assistant Attorney General of the State of Iowa; Percy A. Lainson, Sheriff of Pottawattamie County, Iowa; and American Surety Company of New York, Bondsman for Ray E. Johnson, Treasurer of the State of Iowa, Defendants

Bill of Complaint—Filed Oct. 17, 1932

Comes now the plaintiff, and for cause of action against the defendants, and each of them, states:

I

That it is a corporation organized and existing under and by virtue of the laws of the State of Arizona, and is a resident and citizen of the State of Arizona.

That the defendant, Ray E. Johnson, is the duly elected, qualified and acting Treasurer of the State of Iowa, and is a resident and citizen of said state, having his office in Des Moines, Iowa.

That the defendant, John Fletcher, is the duly elected, qualified and acting Attorney General of the State of Iowa, and is a resident and citizen of said state, having his office at Des Moines, Iowa.

That the defendant, J. J. Hess, is the duly appointed, qualified and acting Assistant General of the State of Iowa, in charge of a division of the office of the Attorney General in reference to the collection and enforcement of the statutes hereinafter referred to, and that J. J. Hess is a resident of Iowa and of Pottawattamie County, in the City of Council Bluffs;

That the defendant, Percy A. Lainson, is the duly elected, qualified and acting Sheriff of Pottawattamie County, Iowa, and his residence is at Council Bluffs in Pottawattamie County, Iowa;

[fol. 4] That American Surety Company of New York is a corporation, and is the surety in the bond of Ray E. Johnson, required to be given by him under the laws of the State of Iowa.

II

That the MonaMotor Oil Company is a corporation as hereinabove alleged, and has the power to sue and to be sued, and has a principal place of business in Council Bluffs, Pottawattamie County, State of Iowa, and is authorized to and does business in the State of Iowa, and in other states as a foreign corporation, and is engaged in Iowa in the business of refining, blending, compounding, buying and selling gasoline, motor vehicle fuel and other petroleum products.

That said MonaMotor Oil Company is the owner of a gasoline refining, blending and compounding plant in the Town of Carter Lake, Pottawattamie County, Iowa, at which place it refines, blends or compounds gasoline, motor vehicle fuel and other petroleum products, and maintains at said point and place, bulk and storage tanks for the storage of gasoline refined, blended and compounded and purchased by the said corporation; and the said plaintiff is further engaged in Council Bluffs, Iowa, in selling and delivering to customers and dealers in the State of Iowa, and other states, such gasoline and other petroleum products so refined, blended or compounded or purchased by it from other sources, which transactions and deliveries are a part of its interstate business.

III

That in addition to such interstate business, being the business of importing gasoline into Iowa, the said plaintiff

operates a refinery as above referred to, and manufactures in Iowa, blends and compounds large quantities of gasoline, and the plaintiff maintains in Iowa a great many bulk stations for the storage of gasoline, from which stations the gasoline manufactured in Iowa and gasoline imported into Iowa is distributed to the various dealers in Iowa, customers of the plaintiff, and to various service stations operated in Iowa by plaintiff; that plaintiff maintains, operates, owns, or is the lessee of numerous service sta- [fol. 5] tions located at various points in the State of Iowa, and said plaintiff sells to customers in Iowa some of its gasoline, motor vehicle fuel and other petroleum products so manufactured in Iowa and imported into Iowa to its various customers.

IV

That plaintiff is the owner of bulk and service stations, pays a large amount of taxes upon said property to the State of Iowa, and pays in rental upon service stations leased, a sum in excess of $5,000.00 per month.

V

That out of, from or through the bulk stations and service station plants in Iowa, the plaintiff sells approximately 300,000 gallons per month of gasoline, together with a large amount of oils, grease, tires and other kindred products, of the value of approximately $12,500.00 per month, and the plaintiff has built up and is enjoying a large business in the State of Iowa, at said locations and in said commodities; and the plaintiff has in its possession and is the owner of many thousands of gallons of gasoline and other motor vehicle fuel on which it has paid to the State of Iowa 3 cents per gallon as a property tax upon said gasoline, said payment being made to Ray E. Johnson, Treasurer of the State of Iowa, which tax so paid exceeds many times the sum of $3,000.00.

VI

That in addition to the maintenance and operation of the service stations and bulk plants and refinery in the State of Iowa as above referred to, the plaintiff is engaged in the business of selling gasoline at Council Bluffs, Iowa, to many dealers in the states of Nebraska, Minnesota,

South Dakota and other surrounding states, and is making sales of its gasoline from its bulk stations in Iowa and delivering the same to customers and dealers in Nebraska and particularly in the City of Omaha, and in the other states above referred to; and that it has built up a line of customers among certain dealers in Nebraska, South Dakota, Minnesota and other states, and has and maintains a business of supplying these customers with gaso- [fol. 6] line from its bulk stations located in Iowa, and particularly at Council Bluffs, Iowa, and at Carter Lake, Iowa; that connected with said business is a certain element of good will built up through years of service to said customers. From Council Bluffs and in connection with said business, the plaintiff maintains and keeps in storage in the State of Iowa, in certain bulk plants located at various points in Iowa, gasoline for distribution to said dealers in Nebraska, South Dakota, Minnesota and other states upon sales made to them in Iowa, and from said bulk plants makes delivery of gasoline and motor vehicle fuel to said dealers in said various states, by tank cars, tank trucks and other receptacles and containers, said delivery being made to such customers and dealers in the original packages or containers in which the same is transported in interstate commerce from Iowa to said various states and when so delivered is the property of said customers and not of the plaintiff.

VII

That in addition to said interstate business, the plaintiff makes deliveries of gasoline to various customers in the State of Iowa, upon sales made at Council Bluffs, Iowa, and transports said gasoline to said customers, and when so delivered, it is the property of said customers and not the property of the plaintiff.

VIII

That as a part of and connected with the business of dealing in petroleum products, gasoline and motor vehicle fuel, the plaintiff maintains a radio station known as KOIL, located at Council Bluffs, Iowa, which station is duly licensed under the laws of the United States; and over such station the plaintiff broadcasts its own advertising

and the advertising of other customers; and the operation of said radio station is connected with and a part of the operation of selling gasoline in the State of Iowa, and a part of the business of the distribution of gasoline in the State of Iowa. That the company employs in the operation of said radio station, a number of customers and talented employees and has a large investment in property belonging to said station and the operation of said station is a part of the business conducted by the MonaMotor Oil Company in the State of Iowa.

[fol. 7] IX

That as a part of the business conducted in Iowa by said MonaMotor Oil Company, the said company imports into Iowa from other states in tank cars and other containers, and by tank truck, certain gasoline in interstate commerce, and the importation of such gasoline is business conducted interstate and as a part of their commerce between states, and such importation of gasoline is a part of the general business regularly conducted by the MonaMotor Oil Company in the State of Iowa; and the delivery of said gasoline in interstate commerce upon sales made in Iowa in original package is a large part of the business of the MonaMotor Oil Company, amounting to many thousand gallons per month, and such a business is now being conducted by the MonaMotor Oil Company in the State of Iowa.

X

That on or about the — day of June, 1927, at the demand of Ray E. Johnson, Treasurer of the State of Iowa, the plaintiff made written application to the Treasurer for a distributor's certificate and license, as provided for in Section 5093-a4 of the Code of 1927.

XI

That pursuant to said application so demanded, the defendant, Ray E. Johnson, Treasurer of the State of Iowa, issued to the MonaMotor Oil Company a distributor's certificate and license under date of June —, 1927.

XII

That the State of Iowa has enacted certain laws and has in force certain statutes relative to motor vehicle fuels,

taxes thereon and sales thereof, and as a part of the same division and chapter of the law the statutes relative to distributor's certificate and license required are included, and included therein are other regulations as to taxation upon gasoline and motor vehicle fuels, and regulations for the issuance of license, which acts are now claimed to be in force in the State of Iowa. The statutes under which the various acts complained of by plaintiff or demanded [fol. 8] by the defendant, are hereto attached, marked Exhibit "C", and made a part of this petition by reference.

XIII

That on or about the 5th day of April, 1932, and immediately following said date, the said Ray E. Johnson, Treasurer of the State of Iowa, publicly asserted that the MonaMotor Oil Company of Council Bluffs, Iowa, had made certain false reports with reference to gasoline imported into the State of Iowa, and that said gasoline was subject to taxation under the laws of the State of Iowa, and through the employees and representatives of said Ray E. Johnson, and acting through John Fletcher, Attorney General of the State of Iowa, caused to be filed as against the MonaMotor Oil Company, certain informations in the Municipal Court of Council Bluffs, Iowa, charging the MonaMotor Oil Company with violations of Sections 5093-a5 and 5093-a7 of the Code of Iowa, and said informations so filed were carried upon the docket of said court, up until the August Term of the District Court of Pottawattamie County, Iowa, at which time the matter was presented to the Grand Jury of Pottawattamie County, Iowa, and certain indictments were returned, charging the MonaMotor Oil Company with violation of the sections last above referred to. That said indictments were thereafter dismissed as against the MonaMotor Oil Company, but the said Treasurer and the said Attorney General, and J. J. Hess, as Assistant Attorney General, have been harassing the MonaMotor Oil Company by such criminal prosecutions and threats of criminal prosecutions continually from the date of the filing of said informations down to the present time, and are continuing to make claims of violations of said statutes and of other statutes hereto attached; and are threatening to maintain and file other criminal charges under and by virtue of said statutes.

XIV

That on October 14, 1932, the defendant, Ray E. Johnson, Treasurer of the State of Iowa, and the State of Iowa acting by and through John Fletcher, Attorney General, and J. J. Hess, Assistant Attorney General, caused to be filed in the office of the Clerk of the District Court of [fol. 9] Pottawattamie County, Iowa, a petition alleging that certain gasoline tax is due to the State of Iowa, under and by virtue of the terms of Chapter 251-A1, Code of 1927, and Sections 4755-b38, Code of 1927, and Chapter 251-A1, Code of 1931, and Section 4755-b28, Code of 1931, which petition alleges that the defendant imported into the State of Iowa and sold, gasoline during a period from January 1, 1929 to March 31, 1932, upon which there is payable the sum of $24,959.10, together with the further sum of $2,495.91 claimed as penalties under said statutes, and that upon the filing of said petition the said defendants asked for the issuance of a writ of attachment, and said writ of attachment was placed in the hands of the sheriff who proceeded to and did levy upon certain property of the MonaMotor Oil Company. And as a part of the scheme to harass and compel the MonaMotor Oil Company to make payment of this tax, the said Ray E. Johnson, through his attorneys John Fletcher and J. J. Hess, have instructed the sheriff to levy upon the personal property of the MonaMotor Oil Company to such an extent as will prevent them from conducting their business in the State of Iowa, both interstate and intrastate. That the MonaMotor Oil Company is the owner of a large amount of real estate, unincumbered, far in excess of the value of the claim of the defendants were it allowed in its full amount; and that in order to harass the plaintiff and prevent the plaintiff from carrying on its business, the said attorneys have instructed the sheriff that instead of making a levy upon the real estate, which would be the method that would least effect the business of said company, that the sheriff must levy upon the personal property of said company and in such a manner as will prevent the further conducting of the business of said company in the State of Iowa; and that the sole purpose of the dictation to the sheriff is to compel him to do such acts as will, to the greatest extent, be injurious to the business of the

plaintiff, and the sheriff is threatening to make such levy even though ample real estate exists upon which levy could be made to amply secure the State of Iowa upon all claims for taxes now being asserted by the defendants. That if [fol. 10] the sheriff of Pottawattamie County is allowed to continue and carry out the threats made by him, the business of the MonaMotor Oil Company will be irreparably injured, hundreds of employees will be thrown out of work, and the whole business organization of said company disrupted and made valueless. A copy of said petition is hereto attached, marked Exhibit "D", and made a part hereof by reference.

XV

That the said Ray E. Johnson, Treasurer of State, shortly after April 5, 1932, demanded of the MonaMotor Oil Company the right, by and through his employees, to enter the property of the MonaMotor Oil Company and make an examination and audit of the books, records and papers of said corporation; said demand being made under and by virtue of the provisions of Section 5093-a6 of the 1931 Code of Iowa, and at said time, furnish- to the Mona-Motor Oil Company a certificate stating that Fred J. Peterson and assistants of Wolfe & Company, were appointed and employed by the State of Iowa and by Ray E. Johnson, Treasurer, to make such examination as is provided for by the said section of the statute, a copy thereof being hereto attached, marked Exhibit "E" and made a part hereof.

XVI

That following the examination made by the said employees of the State of Iowa, the said employees prepared for the state of Iowa and R. E. Johnson, what they termed an audit, and the information thus obtained by duress by the said State Treasurer, has since been furnished to many other parties and particularly T. W. Bass, Treasurer of the State of Nebraska; and said information has been in no manner treated as confidential, nor has the information gained by the Treasurer and his representatives by said investigation, been in any manner treated as confidential and has been divulged to the newspapers and to many parties, all to the great injury and damage of the Mona-Motor Oil Company.

XVII

That on August 15, 1932, the said Ray E. Johnson, Treasurer, made a demand upon the MonaMotor Oil Company for the sum of $27,555.01, based upon the audit made by [fol. 11] Wolfe & Company, covering the period from January 1, 1929 to March 31, 1932, a copy of which demand is attached to and is a part of Exhibit "D", and is a part of this petition.

XVIII

That by the incorporating of said demand into said petition and referring to the same and filing the same of record, the said Treasurer of Iowa thereby alleges and makes public that Folio 8 of the information obtained in the manner aforesaid, shows certain facts and is thereby disclosing and making public the result of the examination which is expressly provided under the statute to be confidential and so treated by the State Treasurer and his employees.

XIX

That the State Treasurer, Ray E. Johnson, in direct violation of the provisions of said section of the Code above referred to, which compels the MonaMotor Oil Company to submit to an examination of its books and records, and the attorneys acting for him, are proceeding to and are divulging and wholly failing to treat the information obtained by such examination as confidential, and are making such information available to the public by specifically referring in said petition to said audit so obtained and Folio 8 thereof, and have in other manners divulged such information in direct violation of the provisions of such statute.

XX

That upon the same day, to-wit, October 14, 1932, the Treasurer of the State of Iowa, acting arbitrarily and without any hearing being had, and without it being first judicially determined in any manner by any form of legal proceeding, and without the MonaMotor Oil Company having had any opportunity to be heard before any tribunal as to whether or not it had in any manner violated any of the provisions of law, the said Ray E. Johnson, Treasurer of State, attempted to and claims to have cancelled

the certificate and license of the MonaMotor Oil Company to transact business in the State of Iowa, as a dealer in motor vehicle fuels and a distributor thereof, and has served notice upon the MonaMotor Oil Company of the cancellation of said license.

[fol. 12] XXI

That in addition to the matters and things heretofore set out as done by the defendants in this action, in each and every month from March 31, 1932 down to the present time, the Treasurer of the State of Iowa has demanded a report from the MonaMotor Oil Company showing gasoline imported into the State of Iowa, and has insisted that there be placed thereon gasoline and motor vehicle fuels manufactured, blended and compounded at the refinery at Carter Lake, Iowa, and has by duress, such duress being that of threats of cancellation of license and criminal penalties, exacted from the MonaMotor Oil Company, certain taxes for each and every month, to-wit, April, May, June, July, August, September and October, 1932, upon gasoline imported and gasoline manufactured in the State of Iowa, and has collected, and the MonaMotor Oil Company has paid, for each of said months, the following amounts:

April, $10,860.75; May, $10,389.12; June, $12,581.07; July, $7,830.03; August, $9,553.68; September, —; October, —.

That in making payment for the months of June, July and August, 1932, the MonaMotor Oil Company filed with their report a protest, and said taxes were paid to R. E. Johnson under protest; a copy of which protest is attached hereto, marked Exhibit "F", and made a part hereof. That during all of the months from March, 1932, and particularly with reference thereto, the Treasurer has illegally and unlawfully exacted from the MonaMotor Oil Company the payment of the taxes aforesaid, and is continuing to demand and require similar reports and will continue to exact and demand payment of taxes in the future, and unless such payments and reports are made, will continue to subject the plaintiff to suits, to the cancellation of its license without hearing, and to criminal prosecutions for failure to comply with such illegal demands.

XXII

That said Ray E. Johnson has exacted and caused to be paid, in addition to the amounts from March 31, 1932, [fol. 13] above referred to, the total sum of $461,699.83, all being exacted under illegal duress, and there has been illegally paid to Ray E. Johnson, and illegally exacted and collected by him from the MonaMotor Oil Company, from May, 1927 to May 1932, the sum of $461,699.83.

XXIII

That included in said total amount of taxes so illegally exacted and collected, and as one specific item thereof, the said Ray E. Johnson, from January 1, 1929 to March 31, 1932, has required of said plaintiff to file report of gasoline imported into the State of Iowa in the amount of 11,114,915 gallons, and has imposed thereon as a tax on imported gasoline, 3 cents per gallon upon 5,864,356 gallons, the same being the gasoline imported by the MonaMotor Oil Company into the State of Iowa; that in addition thereto the said State Treasurer, purporting to act under the sections of the statute hereto attached, has required to be reported as gasoline imported into Iowa, all gasoline shipped from Carter Lake, Iowa, and the refinery of the plaintiff located at Carter Lake, Pottawattamie County, Iowa, of gasoline manufactured in Iowa, a total of 10,341,846 gallons, upon which gasoline the said State Treasurer has imposed a tax of 3 cents per gallon, thereby collecting from the MonaMotor Oil Company upon gasoline not included in the report of importations, a tax in the sum of $134,324.70, said tax being imposed upon gasoline and motor vehicle fuel manufactured in Iowa during said period of time, and gasoline and motor fuel that could not be, within the provisions of the statute, required by the State Treasurer as a basis for tax under the statutes above referred to, and particularly could not be deemed to be gasoline or motor vehicle fuel required to be reported under the provisions of Section 5093-a5 of the Code of 1927, which requires of the distributor a report showing the total number of gallons of gasoline imported by him during the preceding calendar month; the date of receipt, unloading point, tank car identification and invoice gallonage of each and every tank car or other receptacle in which gasoline is imported into the State of Iowa. That all the tax col-

lected in excess of the tax on 5,864,356 gallons was exacted [fol. 14] and collected and by the said State Treasurer required to be reported and tax required to be paid to the State of Iowa upon gasoline not imported for said period of time was the sum of $134,324.70, and said amount of tax was paid by the MonaMotor Oil Company and collected by said treasurer through said period of time, and during said time a tax was imposed and collected upon gasoline manufactured in the State of Iowa in said amount in excess of that required by the statute as a report upon imported gasoline, and said amount was illegally exacted from the plaintiff in the manner aforesaid.

XXIV

That in addition to the amounts illegally exacted and collected as heretofore alleged, the State of Iowa is now asserting the further illegal claim in the sum of $27,455.01, and as a means of duress and to force collection and payment of said illegal amount the said plaintiff is being harrassed by the writ of attachment above referred to and by the cancellation of its license, and is being subjected to the possibility of criminal prosecution for operating without a license, and that as a part of the plan and scheme of the defendants, and particularly Ray E. Johnson, John Fletcher and J. J. Hess, to illegally enforce against the MonaMotor Oil Company this payment of $27,455.01, and without any hearing being had to determine the facts as to whether or not a proper payment of tax has been made by the MonaMotor Oil Company, and without any finding or hearing by the State Treasurer that the MonaMotor Oil Company has failed, neglected or refused to pay the tax, and without giving to the plaintiff any day in Court, the defendants are asserting against the MonaMotor Oil Company, not only a claim for $27,455.01 as a tax on motor vehicle fuel, but have arbitrarily and without hearing, cancelled the license and certificate issued by the State of Iowa to the MonaMotor Oil Company, and has served upon the MonaMotor Oil Company notice of the cancellation of such license. A copy of the notice of the cancellation of the license is hereto attached, marked Exhibit "G", and by this reference made a part hereof.

[fol. 15]

XXV

That at the time the defendants, and particularly Ray E. Johnson, Treasurer, cancelled said license and gave notice thereof he knew and was informed by the plaintiff of its claim that the enforcement as against it of any claim for taxes was illegal and void and was a direct interference with its business in interstate commerce, and was informed of all the matters and things which the plaintiff knew in the nature of cause why such license should not be cancelled, and further knew that the Mona-Motor Oil Company had in no manner failed, refused or neglected to report or pay any tax due the State of Iowa that could be legally assessed and collected against said company.

XXVI

That said defendants, unless enjoined, will continue to harrass the plaintiff and will prevent the plaintiff from carrying on its business in the State of Iowa, and will proceed to institute criminal proceedings against the plaintiff and employees to prevent it from engaging in the business of an oil dealer, both intrastate and interstate business, and will proceed to close the stations of the plaintiff and prevent the plaintiff from carrying on its business in the State of Iowa, and that there are in excess of two hundred (200) employees of the plaintiff who will be thrown out of work, and many of the employees in other states will be deprived of their means of livelihood and the value of the property of the plaintiff in the State of Iowa, and the value of gasoline stations in the State of Iowa, owned and operated by the plaintiff, will be injured and destroyed in an amount many times greater than Three Thousand Dollars ($3,000.00), and the good will of the business of the plaintiff in Iowa will be destroyed entirely, or very seriously injured, and the plaintiff will lose the services of its employees in the State of Iowa and in other states, and the personnel of such employees which it has built up in the State of Iowa through long years of successful business in said state.

XXVII

That said Ray E. Johnson, John Fletcher and J. J. Hess, by the threat and cancellation of such license, and the pos-
[fol. 16] sible institution of criminal proceedings, are at-

tempting to compel payment by plaintiff of the sum of $27,455.01 taxes not due or owing from plaintiff to the State of Iowa, or the Treasurer of the State of Iowa, by reason of the facts hereinabove alleged, and the plaintiff, unless this injunction prayed for is granted, will be compelled by such threats and such actions to either pay said tax, even though said tax is illegal, or suffer irreparable losses to its business and property as herein alleged and referred to.

XXVIII

That plaintiff has never had an opportunity to be heard on the question of whether there is any amount owing to the State of Iowa by it under and by virtue of the facts and circumstances herein alleged and set out, and the plaintiff has never had an opportunity, and the statutes of Iowa do not afford an opportunity to be heard, and the defendants herein do not intend to give or grant in any manner a valid, lawful, statutory opportunity to be heard on the part of the plaintiff before the said alleged tax liability becomes irreparably fixed on the question of liability of the plaintiff for said tax under the facts, or the amount thereof. And it is the intention and purpose of the said Ray E. Johnson, Treasurer of the State of Iowa, to prevent the plaintiff from carrying on his business in the State of Iowa, both interstate and intrastate, and thereafter subject the plaintiff to criminal prosecutions and criminal penalties for doing business in Iowa and in interstate commerce in the manner herein alleged, all as a means of compelling the plaintiff to pay such sum so claimed by him as being now due and such sums as may become due from time to time under said statutes, and this to be without any opportunity to be heard as to its liability or the amount thereof. And the said defendants are using and threatening to use the criminal and penal statutes of the State of Iowa to collect taxes which are not due from plaintiff, and without giving the plaintiff an opportunity to be heard thereon.

XXIX

That under and by virtue of the laws of the State of Iowa, the said Ray E. Johnson, Treasurer of the State of [fol. 17] Iowa, has no right, power or authority to compel the plaintiff, or to attempt to compel the plaintiff by cancellation of its oil dealer's license and certificate by reason

of the facts herein asserted to in any way interfere with the operation of plaintiff's business, and the said statutes of the State of Iowa herein referred to and set out by reference, insofar as they give to Ray E. Johnson and the other defendants any power or authority to proceed, are illegal and void and in contravention of Section I of the 14th Amendment to the Constitution of the United States, and denies to the plaintiff the equal protection of the law, and denies to the plaintiff due process of law guaranteed to it by the Constitution of the United States and the Constitution of the State of Iowa, and takes the property of the plaintiff without due process of law, in contravention of the Constitution of both the United States and the State of Iowa. That the alleged attempt in the manner herein stated and set out of the Treasurer to prevent the plaintiff from carrying on its business in the State of Iowa, and to institute criminal proceedings, whether by virtue of such statute or not, is illegal, unlawful and void for the reason that such acts and conduct results in irreparable injury to the plaintiff and takes the property of the plaintiff without due process of law, contrary to the Constitution of the United States and of the State of Iowa, and denies to the plaintiff the equal protection of the law.

XXX

That the statutes of the State of Iowa, and each and every one of them pertaining to the collection and the levy of a tax on gasoline, and pertaining to the enforcement thereof and the collection thereof, and imposing upon distributors fines, penalties and forfeitures, and requiring of them a license, and providing for a distribution of said tax, are each of them void, illegal and of no force and effect, and said statutes, and each of them, violate the terms of the provisions of the Constitution of the United States and of the State of Iowa, and deprive the plaintiff of rights under both the Constitution of the State of Iowa and the Constitution of the United States, said violations of said constitution being hereafter more particularly referred to.

[fol. 18] XXXI

That the conduct of Ray E. Johnson, in requiring reports and prescribing forms, and collecting thereon a tax of 3 cents a gallon, based on imported gasoline only, as is being

done in the State of Iowa, and the imposition of said tax as is now sought to be collected, and unless said officers are enjoined, will be sought to be collected, is a direct violation of Article I, Section 10, Paragraph 2, of the Constitution of the United States, and constitutes and is a tax burden upon the interstate commerce of the plaintiff, and the statutes of the State of Iowa under which said defendants purport to act are in direct violation of the state constitutional provision, and place upon the interstate business of the plaintiff a direct burden. That the manner of enforcing the collection of said tax, and all of the provisions of the law of the State of Iowa, with reference thereto, as applied to the business of the plaintiff, is a direct violation of the said section of the Constitution of the United States, and of the State of Iowa, and is a direct discrimination as applied to imported gasoline only, and the plaintiff is deprived of his constitutional right to the due process of law, and his constitutional right to be protected against unjust discrimination.

XXXII

That the sections of the law made a part hereof are null and void as applied to each particular section thereof in the following particulars: That Chapter 103 of the Laws of the 42nd General Assembly of Iowa, and particularly Section I thereof, which also appears as Section 4755-b5 and Section 4755-b8 of the Code of Iowa, 1927, and the Code of Iowa, 1931, which attempts to provide for a tax of one cent per gallon on all gasoline imported and used within the state, is null and void, and of no force and effect for the following reasons:

(a) That said law was never enacted in that Chapter 103 was an act to amend Senate File No. 104, of the 42nd General Assembly, and does amend said act by striking from line six thereof the word and figure "three", and from that point on, nothing is enacted in lieu thereof.

[fol. 19] (b) That the title to the act expresses no object to which the tax is applied, but refers to another law to fix such tax or object, and that such attempt to so enact the law is a direct violation of the Constitution of the State of Iowa and the sections hereinafter referred to.

(c) The tax, being laid against gasoline is a property tax and is against gasoline imported and used in the state, and

thereby imposes a burden on interstate commerce and denies the distributor the equal protection of the law. It is arbitrary and unjust and imposes on interstate commerce and interstate commerce business conducted by this plaintiff a burden contrary to and in violation of the provisions of Article I, Section 10, Paragraph 2, of the Constitution of the United States, relating to interstate commerce; and said provision discriminates directly against the plaintiff as an importer of gasoline, imposing thereon a tax of one-cent, while all other gasoline such as might be manufactured and used in the state of Iowa is exempt from the operation of the state statute. That said discrimination is in direct violation of Art. I, Sec. 10, Par. 2 and Art. I, Sec. 8 of the Constitution of the United States.

XXXIII

That Sections 4755-b5 and 4755-b38 of the 1931 Code of Iowa are unconstitutional and void and are a direct violation of the constitutional rights of the plaintiff as defined by the Constitution of the State of Iowa, Article III, Section 29, as follows:

"Acts. One Subject Expressed in Title. Section 29. Every act shall embrace but one subject and matter properly connected therewith, which subject shall be expressed in the title. But for any subject which shall be embraced in the act which shall not be expressed in the title such act, shall be void only as to so much thereof as shall not be expressed in the title."

Article VII, Section 7, Constitution of Iowa, which reads:

"Tax Imposed Distinctly Stated. Sec. 7. Every law which imposes, continues or revises a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object."

That the sections last above referred to were enacted by the Legislature, and the title to said act and the act amended are fully set out as in Exhibit "C" hereto attached, and are hereby referred to. That said title to the act in no manner refers to a tax on gasoline, and this part

of the subject of the act is in no manner referred to or expressed in the title of said act or in the body thereof in no manner expresses the object to which it is to be applied. That by reason of said defect, the act is a direct violation of the Constitution of the State of Iowa, and is null and void and of no force or effect..

[fol. 20] XXXIV

That the statutes last above referred to, imposing a 1 cent tax upon gasoline imported and used in Iowa, deprives the plaintiff of its right to protection under the United States Constitution against unjust discrimination, and is in violation of Article I, Secs. 8 and 10 of the Constitution of the United States.

XXXV

That said act provided for a tax upon gasoline imported and used, and thereby places a direct burden upon the interstate commerce and the business conducted by this plaintiff as interstate commerce business, and the provisions of said act deprive the plaintiff of its right to the protection of the Constitution of the United States, and is in direct contravention of Article I of Section 10, Paragraph 2, of the Constitution of the United States.

XXXVI

That Chapter 52-A-1 of the Code of 1931, and all acts therein referred to, from which said sections are derived, are each and all of them, and said chapter is, unconstitutional and void, and is a direct violation of the rights of the plaintiff, and deprives the plaintiff of equal protection of the law; and deprives the plaintiff of its right to due process of law in said act as it imposes upon the plaintiff the duty to report upon imported gasoline only, and attempts to compute thereon a tax of 2 cents per gallon upon all of such imports and upon such imports only, and lays the tax as against the user of gasoline for the propelling of a motor vehicle upon the highway, and attempts to enforce the payment of the tax laid against such user upon the distributor who is in no manner liable for said tax, and thereby attempts to make said distributor responsible for the payment of a tax of a third party made directly liable therefor, and such an act is a violation of the constitutional rights of

the plaintiff under the Constitution of the United States and the Constitution of the State of Iowa.

[fol. 21] XXXVII

That said act provides for certain penalties and for a license to do business in the State of Iowa, conditioned upon the payment of a tax referred to in said act, and is attempted to be enforced conditioned upon the distributor (this plaintiff) paying to the State of Iowa, said tax imposed upon said gasoline with a penalty for their failure to report and pay the tax for which it is not charged or made liable, without hearing or any process of law. The penalties may be inflicted and the license cancelled and the right to do business, both interstate and intrastate, thereby prevented, and that such an act containing such provisions is in direct violation of Article I, Section 10, Paragraph 2 of the Constitution of the United States.

XXXVIII

That the act as construed and enforced by the State of Iowa imposes a direct burden upon the interstate business of plaintiff as applied to imported gasoline only, and as so interpreted and applied, deprives the plaintiff of its constitutional rights as provided for by Article I, Section 10, Paragraph 2 of the Constitution of the United States, and imposes a direct burden upon interstate commerce, in violation of the provisions of said constitution.

XXXIX

That that portion of said —, in so far as the same gives to the defendant Ray E. Johnson, Treasurer of the State of Iowa, the right, power and authority to suspend or revoke the license of plaintiff, or purports to do so, as a method of compelling the payment of taxes alleged by him, not found to be due, and prior to any hearing or opportunity to be heard where the question of amount of liability of the plaintiff or amount overpaid can be heard or determined, is illegal, unconstitutional and void for the following reasons:

1. It is unlawful under and by virtue of the laws and where no other method is so provided, to thus destroy the property and business of the plaintiff as a means of com-

pelling it to pay an alleged tax the value of which has never been determined or a hearing had thereon or afforded.

2. That to so suspend or cancel the license of the plaintiff under and by virtue of statute as in Iowa enacted, and thus destroy the value of its property and business in the [fol. 22] State of Iowa and in other states, and its interstate business, under the facts herein set out, as a matter of compulsion to compel the plaintiff to pay an illegal tax, is in contravention of Section 1 of the Fourteenth Amendment of the Constitution of the United States, and denies to the plaintiff due process of law guaranteed by such constitution and the Constitution of Iowa, and is in contravention of the Constitution of the United States guaranteeing to the plaintiff equal protection of the law, and is in contravention of Article I, Section 10, Paragraph 2 of the Constitution of the United States relating to interstate commerce, in that it seeks to compel the plaintiff to submit to an illegal, unconstitutional burden upon its interstate commerce business under pain and compulsion and pain of destruction of its intrastate business in Iowa and interstate business with customers outside of the State of Iowa and in the State of Iowa, and further destruction of its property, both real and personal, in the State of Iowa.

XL

That the acts of the defendants, as hereinabove set out, and complained of, and the methods adopted by the Treasurer of the State of Iowa and by the other defendants to attempt to collect taxes claimed to be now due and such as will become due in the future, are in direct contravention of the rights of this plaintiff as guaranteed to it under the several sections of the Constitution of the United States as hereinbefore referred to, and the Constitution of the State of Iowa.

XLI

That either under the statute or under the construction of the Treasurer of the State of Iowa and his officers, of the statute in applying the same as affecting the Mona-Motor Oil Company, the acts done thereunder, and each of them, in attempting to collect the claim for unpaid taxes and in collecting all the taxes heretofore, and in attempting to collect taxes in the future, are unconstitutional and void,

and directly violate the constitutional rights of the Plaintiff and deprive the Plaintiff of Constitutional rights under each and every section of the Constitution of the United States hereinbefore specifically referred to, and the Constitution of the State of Iowa.

XLII

Plaintiff further alleges that unless there is a temporary restraining order issued and served upon the defendants, Ray E. Johnson, Treasurer of the State of Iowa, John Fletcher, Attorney General of the State of Iowa, J. J. Hess, Assistant Attorney General of the State of Iowa, and Percy A. Lainson, Sheriff of Pottawattamie County, Iowa, the said defendants will undertake to prevent the plaintiff from conducting its business in the State of Iowa, and that by rea- [fol. 23] son of said revocation of its license it will be prevented from doing business, and any business conducted would be subjected to the criminal statutes and penalties, whether such business be intrastate business or interstate business in the State of Iowa, and will be prevented from doing business with its customers in the State of Iowa, and the plaintiff will suffer irreparable loss and damage and be damaged in a way that cannot be repaired or be met at common law; and from these threatened wrongs plaintiff has no remedy at common law, but the only remedy is by a bill in equity, and unless restrained by this Court the defendants, and particularly Ray E. Johnson, will attempt to prevent the plaintiff from transacting business and will enforce and collect said illegal taxes and will subject the plaintiff to the embarrassment of many suits and cast a cloud upon its franchises, rights and property, and an effort will be made to enforce penalties against this plaintiff as hereinbefore set out, and further attempts will be made to continue the collection of illegal taxes from month to month; and that by reason of such facts that said injuries will result if notice be given and served of this hearing for temporary restraining order, and that by reason of such facts, no notice can be served and a hearing had thereon prior to the doing of the thing which will result in irreparable injury which is herein complained of.

Wherefore, plaintiff prays for a writ of injunction, as well provisional as permanent, issuing out of and under the seal of this Court, enjoining and restraining the defend-

ants, and each of them, from any further steps or proceedings, suits or actions, either at law or in equity, to collect or pay the taxes referred to in this petition, and from taking any steps to prevent the plaintiff from transacting its business in the State of Iowa.

Plaintiff further prays that a writ of injunction issue commanding the defendants, and all persons claiming to act under their authority, or the authority of either of them, to absolutely desist and refrain from any attempt to collect the tax referred to in plaintiff's petition, until such time as this Court shall direct an order herein, and that upon final determination of this suit the said stay order and [fol. 24] temporary injunction prayed for herein may be made perpetual.

Plaintiff further prays for writ or writs of injunction to issue preliminary until the hearing of this case, and permanently thereafter, enjoining said defendants and each of them, and their officers, clerks, attorneys, servants, agents, employees and confederates, and each of them, from in any manner, proceeding to cancel the license of the plaintiff as an oil dealer, and from in any manner preventing the plaintiff from transacting its business within the State of Iowa.

Plaintiff further prays that defendants, and each and every one of them, be perpetually enjoined and restrained from hereafter taking any steps to collect the tax referred to in plaintiff's petition, or imposing against the plaintiff any penalty, either by cancellation of its license, or [criminal proceedings or penalties, or in any manner preventing the plaintiff from transacting its business in the State of Iowa.

Plaintiff further prays, pending further order of this Court, that defendants, and each of them, and all those acting under and by virtue of their authority, may be restrained and enjoined from enforcing or attempting to enforce, the provisions of the statutes of the State of Iowa relative to the collection of the gasoline tax or motor vehicle tax, and with reference to the license imposed on distributors as the same is applied to the facts alleged in this petition.

Plaintiff further prays that, pending the final determination of the subject-matter hereof, a preliminary injunction or restraining order issue, restraining the said defendants from taking any steps or attempting to collect the tax referred to in plaintiff's petition, or to in any manner prevent

the plaintiff from conducting its business in the State of Iowa.

Plaintiff further prays with reference to the temporary restraining order, that inasmuch as the matter is urgent and does not admit of notice of the application for a preliminary injunction, that a temporary restraining order issue enjoining the defendants and their officers, agents and em- [fol. 25] ployees from the several acts heretofore set out in the prayer of this petition until the further order of this Court; and that said restraining order be in accordance with the prayer for a preliminary and perpetual injunction, and that said temporary restraining order be served on each of said defendants, and that as to those unknown and unnamed, the same may be ordered and decreed by this Court, to become binding upon the publication of the same in one or more public newspapers of general circulation to be designated in the order of this Court.

Plaintiff further prays that forthwith on the filing of this bill, an order shall issue to show cause why the injunction pending in this suit should not be granted, and that concurrently with the issuance of said order to show cause, a temporary restraining order issue enjoining the said defendants, their agents, servants, attorneys and privies in like manner and effect as hereinbefore prayed pending the return of said order, and show cause until the further order of this court hereon.

Plaintiff prays that pending final hearing that a decree be entered, finding and decreeing that all taxes claimed by the defendants as due from plaintiff, and all taxes to become due in the future, be declared to be illegal and void, and that the attempted collection thereof is a violation of the constitutional rights of the plaintiff, and that the statutes of Iowa as to distributors, license and certificate is void as it places a burden on interstate commerce, and a violation of the constitutional rights of the plaintiff, and that the acts of the defendants in attempting to prevent the plaintiff from doing business in Iowa by a cancellation of said license, are null and void and in direct violation of the constitutional rights of the plaintiff, and that upon such finding and decree, a permanent injunction issue restraining the defendants from the doing of any act or thing herein complained of. And that plaintiff have such other and further relief as to the Court may seem just and equitable in the premises, and judgment for costs.

Count II

Cause of action as stated in Count II was withdrawn and same is omitted.

(Sgnd.) Mona Motor Oil Company, by Wright & Baldwin, Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Its Attorneys.

Verified.

[fol. 26] *Duly sworn to by Clyde Fuller. Jurat omitted in printing.*

[fol. 27] Exhibit "C" to Bill of Complaint

Laws of the Forty-first General Assembly.

Chapter 6

S. F. 312

An act imposing a license fee on gasoline used or sold for use in the State of Iowa, providing for the payment, collection, refund, distribution and expenditure thereof; providing for penalties for violations of the law; amend section forty-six hundred thirty-five (4635) of the Code, 1924; and making an appropriation for carrying out the provisions of this act.

Be it enacted by the General Assembly of the State of Iowa:

Section 1. Amount of Fee. A license fee of two cents (2¢) per gallon or fraction of a gallon is hereby imposed on all gasoline in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided.

Section 2. Definition of Terms. (a) The term "distributor" as used in this act shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any gasoline to be used within the state or sold or otherwise disposed of by him

within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary gasoline tank attached to and forming a part of such motor vehicle, not more than twenty (20) gallons of gasoline without being considered a distributor.

(b) The term "person" includes individual, partnership, corporation and association. The term "treasurer" means the treasurer of the State of Iowa.

Section 3. Price Placard Misdemeanor Penalty. Any person who sells or offers for sale at retail gasoline in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the sale price, the amount of the tax and the total price per gallon charged to customers on the different grades of gasoline sold. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars ($100.00), or imprisonment in the county jail for a period of not to exceed thirty days.

Section 4. Certificate Required of Distributor. Each distributor of gasoline shall, within thirty (30) days after the taking effect of this act, file with the treasurer a duly acknowledged certificate on forms prescribed and furnished by the treasurer for this purpose, showing the name under which such distributor is transacting business in the State of Iowa, the name and addresses of the several persons constituting the association or partnership, and if a corporation, the corporate name under which it is authorized to transact business and its resident general agent or other officers upon whom process may be served or who is authorized to represent it for all the purposes of this act.

Section 5. Monthly Report—Remittance. Each distributor of gasoline shall, on or before the twentieth (20th) of each calendar month, forward to the treasurer, a statement, sworn to by one of its principal officers, showing the total number of gallons of gasoline imported by him and the total number of gallons of gasoline sold or otherwise disposed of for the preceding calendar month and shall, at the same time remit to the treasurer the amount of the license fee for such preceding month for which such distributor is liable.

[fol. 28] Section 6. Books Open to Inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of gasoline shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation, shall be confidential and any person divulging such information shall be guilty of a misdemeanor and upon conviction thereof, shall be liable to a fine not exceeding one thousand ($1,000.00) dollars.

Section 7. Misdemeanor—Penalty. Any distributor who shall fail to make, or refuse to make the reports to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sales of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 4 and 5 hereof shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred ($100.00) dollars, nor more than five hundred ($500.00) dollars.

Section 8. Reimbursement—Procedure—False Statement. Any person who shall buy or use any gasoline for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes, or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state; or who shall purchase or use any gasoline for cleaning or dying, or for any other commercial use except for propelling motor vehicles operated in part or in whole upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him, upon presenting to the treasurer of state, a statement accompanied by the original invoices showing such purchase, which statement shall set forth the total amount of gasoline so purchased and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state and the

treasurer of state, shall, upon the presentation of such invoices, cause to be repaid from the funds operated by the license fees collected on the use of gasoline as herein provided, the amount of such license fee paid by such consumer on gasoline used for the purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this act shall be filed with the treasurer of state on blank forms provided by him for that purpose within ninety (90) days after the date on which gasoline shall have been purchased, as shown by the invoice. Any person, firm or corporation who shall make any false statements in connection with an application for the refund of any money or license fee as herein provided for or who shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand ($1,000.00) dollars.

Section 9. Distribution of Proceeds. License fees collected under the provisions of this act shall be distributed and disbursed as follows: One-third (⅓) to the primary road fund, one-third (⅓) to the township road fund, one-third (⅓) to the county road fund which county and township funds, the treasurer shall apportion among the counties of the state in the same ratio that the area of the county bears to the total area of the state, and on the first days of each month shall remit to the treasurer of each county the apportionments for its county and township road fund. The county treasurer, thereupon shall apportion such township road fund among the townships of the county in the same ratio that the number of miles of township roads in the township bears to the total number of miles of township roads within the county, and shall remit quarterly to the clerk of each township the apportionment for its township road fund.

[fol. 29] Section 10. Refunds Quarterly. The refunds provided for in section eight (8) of this act shall be made quarterly, by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe

The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state.

Section 10-a1. Employees—Appropriation. The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this act, the number and compensation of such employees to be fixed by the executive council. There is hereby appropriated out of the money received under the provisions of this act sufficient funds to pay for help employed by the treasurer in enforcing the act and for making such refunds as are provided for herein.

Section 11. Act Separable. If any part of this act is held to be unconstitutional or invalid by the courts, such decision shall not effect the validity of the remaining portions of this act.

Section 11-a1. Optional Property Tax Reduction. Section forty-six hundred thirty-five (4635) of the Code, 1924, is amended by striking from line two (2) of subsection two (2) of said section the following words: "less than one mill nor".

Section 12. Publication Clause. This act being deemed of immediate importance shall be in full force and effect from and after its publication in the Iowa Legionaire, a newspaper published in the city of Des Moines, Iowa, and the Sioux City Tribune, a newspaper published in Sioux City, Iowa.

Approved April 3, A. D., 1925.

I hereby certify that the foregoing act was published in the Sioux City Tribune, April 13, 1925, and in the Winterset Madisonian, April 15, 1925.

W. C. Ramsey, Secretary of State.

[fol. 30] Laws of the Forty-second General Assembly

Chapter 248

Collection of Gasoline License Fee

S. F. 347

An Act to amend chapter six (6) of the laws of the forty-first general assembly, and sections one (1), three (3),

seven (7) and eight (8) of said chapter, and to repeal sections four (4) and five (5) of said chapter, and enact substitutes therefor, relating to the collection of gasoline license fees.

Be it Enacted by the General Assembly of the State of Iowa:

Section 1. That the law as it appears in Section one (1) of chapter six (6) of the acts of the forty-first general assembly, be and the same is hereby amended by inserting after the word "gasoline" in line two (2) thereof the words "used or otherwise disposed of."

Section 2. That the law as it appears in section three (3) of chapter six (6) of the acts of the forty-first general assembly be amended by striking from lines four (4) and five (5) thereof the following: "the sale price, the amount of the tax and the total price per gallon charged to customers on the different grades of gasoline sold", and by substituting in lieu thereof the following:

"the total sale price per gallon including license fee, of all grades of gasoline sold; said placard to have printed thereon the words 'state license fee included'. When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him."

Section 3. That the law as it appears in section four (4) of chapter six (6) of the acts of the forty-first general assembly be and the same is hereby repealed and the following enacted in lieu thereof:

"Each distributor now engaged in business as herein defined, shall within thirty days after this act becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of gasoline in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the State of Iowa, and the principal place of business of such distributor if such distributor is a firm or copartnership; the certificate shall also contain the names and addresses of the several persons constituting the same, and if a corporation

or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney-in-fact.

"Each distributor now engaged in business as herein defined, shall, within sixty days after this act becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of gasoline within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor, permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section.

[fol. 31] Section 4. That the law as it appears in section five (5) of chapter six (6) of the acts of the forty-first general assembly be and the same is hereby repealed, and the following enacted in lieu thereof:

"On or before the twentieth day of each calendar month each distributor of gasoline shall file in the office of the treasurer of state at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of gasoline imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which gasoline is imported into the state of Iowa. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

"If, after the prescribed license fees are so remitted and paid, any gasoline in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application

therefor and proof of such destruction or loss satisfactory to the treasurer of state, the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the gasoline fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 8, chapter 6, laws of the 41st G. A.

"If any distributor of gasoline shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within thirty days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act nor any of its provisions shall apply to foreign or interstate commerce."

Section 5. That the law as it appears in chapter six (6) of the acts of the forty-first general assembly be and the same is hereby amended by inserting immediately following section five (5) thereof, the following section:

"5-a. Every railroad company, or other person, firm or corporation transporting gasoline in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of gasoline received at the station or place during the preceding calendar month, the name of the con-

signor and the name of the consignee. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of gasoline as herein defined shall be subject to inspection during ordinary business hours by the treasurer or his representatives."

[fol. 32] Section 6. That the law as it appears in section seven (7) of chapter six (6) of the acts of the forty-first general assembly, be and the same is hereby amended by inserting after the word "distributor" in line one (1) thereof a comma (,) and the following: "railroad or transportation company or agent of a railroad or transportation company."

Also further amend said section by inserting immediately following the word "reports" in line two (2) thereof the words: "or certificate".

Also further amend said section by striking from line seven (7) thereof the following: "4 and 5," and by substituting in lieu thereof the following: "four, five, and five-a."

That said section be further amended by adding to the end thereof the following:

"If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor."

Section 7. That the law as it appears in section 8 (8) of chapter six (6) of the acts of the forty-first general assembly, be and the same is hereby amended by inserting a comma (,) after the word "purchased" in line fourteen (14) thereof; and the words "paid for".

[fol. 33] Code of Iowa, 1927

Chapter 251-A1.

Gasoline License Tax

5093-a1: Amount of Fee. A license fee of two cents (2¢) per gallon or fraction of a gallon is hereby imposed on all gasoline used or otherwise disposed of in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees

shall be collected and disposed of in the manner hereinafter provided. (41 G. A., ch. 6; g. 1; 42 G. A., ch. 248, g. 1.)

5093-a2. Definition of Terms. The term "distributor" as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any gasoline to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary gasoline tank attached to and forming a part of such motor vehicle, not more than twenty gallons of gasoline without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa. (41 G. A., Ch. 6, g. 2.)

5093-a3. Sale Price Placard—Misdemeanor—Penalty. Any person who sells or offers for sale at retail gasoline in this state, shall keep posted in a conspicuous place, most accessible to the public, a placard showing the total sale price per gallon including license fee of all grades of gasoline sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days. (41 G. A., ch. 6, p. 42 G. A., ch. 248, g. 2.)

5093-a4. Certificate—License. Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of gasoline in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which contain the name under which such distributor is transacting business within

the State of Iowa, and the principal place of business of such distributor. If such distributor is a firm or copartnership, the certificate shall also contain the names and addresses of the several persons constituting the same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, and the names and addresses of its principal officers, resident general or managing agent and attorney-in-fact.

Each distributor now engaged in business as herein defined shall, within sixty days after this chapter becomes effective and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of gasoline within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who [fol. 34] has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section. (41 G. A., ch. 6, g. 4; 42 G. A., ch. 248, g. 3.)

5093-a5. Reports—Remittances—Rebates—Penalties. On or before the twentieth day of each calendar month each distributor of gasoline shall file in the office of the treasurer of state at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of gasoline imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which gasoline is imported into the state of Iowa. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss:

If, after the prescribed license fees are so remitted and paid, any gasoline in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee

thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state, the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the gasoline fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 5093 a8.

If any distributor of gasoline shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within thirty days after the date due, the attorney-general shall bring appropriate action for the recovery of such license fees and penalty; and in addition whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42 G. A., ch. 248) nor any of its provisions shall apply to foreign or interstate commerce. (41 G. A., ch. 6, g. 5; 42 G. A., ch. 248, g. 4.)

5093-b1. Tank Car Reports—Inspection of Books. Every railroad company, or other person, firm or corporation transporting gasoline in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of gasoline received at the station or place during the preceding calendar month, the name of the consignor and the name of the consignee. The books, records, and reports of each railroad or other carrier pertaining to the transportation

and delivery of gasoline as herein defined, shall be subject to inspection during ordinary business hours by the treasurer of his representatives. (42 G. A., ch. 248, g. 5.)

[fol. 35] 5093-a6. Books Open to Inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertains to the sale of gasoline shall be subject to inspection at any time during ordinary business hours by the treasurer of his representatives, but any information gained by the treasurer of state or such representatives by such investigation, shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars. (41 G. A., ch. 6, g. 6.)

5093-a7. Misdemeanor—Penalty. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificates to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or who shall in any manner violate the provisions of sections 5093-a4, 5093-a5, and 5093-b1 hereof, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed — of a misdemeanor and shall each be subject to punishment therefor. (41 G. A., ch. 6, g. 6; 42 G. A., ch. 248, g. 6.)

5093-a8. Reimbursement—Procedure—False Statement. Any person who shall buy or use any gasoline for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any gasoline for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public high-

ways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase, which statement shall set forth the total amount of gasoline so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of the state or upon the streets of any city or town of the state, and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from the funds operated by the license fee collected on the use of gasoline as herein provided, the amount of such license fee paid by such consumer on gasoline used for purposes other than for propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose, within ninety days after the date on which such gasoline shall have been purchased as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for a refund of any money or license fee as herein provided, or who shall collect or cause to be repaid to him or any person any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed one thousand ($1,000.00) dollars. (41 G. A., ch. 6, g. 8; 42 G. A. ch. 248, g. 7.)

[fol. 36] 5093-a9. Distribution of Proceeds. License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. One-third to the county road fund and one-third to the township road fund, which county and township road funds, the treasurer shall apportion among the counties of the state in the same ratio that the area of the county bears to the total area of the state, and on the first days of each month shall remit to the treasurer of each county the apportionments for its county and township road fund. The county treasurer, thereupon shall apportion such township road fund among the townships of the county in the same ratio that the number of miles of township roads in the township bears to the total number

of miles of township roads within the county, and shall remit quarterly to the clerk of each township the apportionment for its township road fund. (41 G. A., ch. 6, g. 9.)

5093-a10. Refunds Quarterly. The refunds provided for in section 5093-a8 shall be made quarterly by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state. (41 G. A., ch. 6, g. 10.)

5093-a11. Employees—Appropriation. The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter, sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein. (41 G. A., ch. 6, g. 10-a1.)

5093-a12. Act Separable. If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter. (41 G. A., ch. 6, g. 11; 42 G. A., ch. 248, g. 9.)

[fol. 37] Chapter 101. 1

Chapter 101, Highways. (42 G. A.)

An act to amend, revise and recodify sections 4622, 4623, 4687 to 4706 inclusive, 4708, 4712, 4718, 4719, 4727 to section 4738 inclusive, 4741, 4743, 4744, 4755, 5001 of Code 1924; and chapter 114 of the laws of the 41st General Assembly and to amend section 5002 of the Code, 1924, relative to the primary road system and primary road fund, to transfer the control of the primary road to the state, to empower the state to construct and maintain the primary road system, to do away with special assessments for paving primary roads, to refund for such assessments so levied, to do away with the area basis for allotting primary road funds among the counties, to provide for an increase in the membership of the State Highway Commission, to further

prescribe their rights and duties, and limiting their powers with respect to creating an obligation against the state.

Be It Enacted by the General Assembly of the State of Iowa:

Sections 4687 to 4706 inclusive, 4708, 4712, 4718, 4719, 4727 to 4738 inclusive, section 4741, 4744, 4755, 5001 of the Code 1924, and Chapter 114 of the laws of the 41st General Assembly are hereby amended and codified to read as follows:

Section 5. Reimbursement of Counties. Where additional right of way has been acquired or where bridges have been built on the primary roads, under the supervision of the highway commission, and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges out of the primary road fund within three years from the taking effect of this act; provided, however, any county that has received or will receive during the year 1927, primary road money for use on secondary roads, the amount of such primary road money so received by such county and used on the secondary roads, shall be deducted from the amount of refunds provided for herein. The refunds made to any county, under this section shall be at the option of the board of supervisors of said county, be placed to the credit of the county road fund or the county bridge fund."

Chap. 103, 42, G. A. p. 1

Chapter 103

Highways—Audit—Gasoline Tax

An act to amend the law as it appears in Senate File No. 104 as enacted by the 42nd General Assembly of the State of Iowa, relating to the improvement of the primary road system, and the appointment of members of the highway commis-ion, and an auditor therefor.

Be It Enacted by the General Assembly of the State of Iowa:

Section One. That the law as it appears in section 5 of Senate File No. 104, as enacted by the 42nd General Assembly of the State of Iowa, be and the same is hereby

amended by striking from line 6 thereof the word "three" (3) five annual payments. The first payment to be made January 1, 1928, and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six (6) years nor to bear an interest rate to exceed five (5) per cent. There is hereby levied on all gasoline imported and used within this state a license fee of one (1) cent per gallon, which shall be in addition to the license [fol. 38] fee levied by chapter six (6), laws of the 41st General Assembly. All of the provisions and conditions of said chapter six (6), laws of the 41st General Assembly, relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee collected herein. Out of the proceeds of said additional license fee, the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund.

Section Two. That the law as it appears in section 16 of Senate File No. 104, as enacted by the 42nd General Assembly of the state of Iowa, be and the same is hereby repealed, and the following enacted in lieu thereof:

"All claims shall be itemized on voucher forms prepared for that purpose, sworn to by the claimants, certified to by the engineer in charge, and then forwarded to the state highway commission for audit and approval. Upon the approval by the state highway commission of vouchers which are payable from the primary road fund, such vouchers shall be forwarded to the auditor of state, who shall draw warrants therefor, and said warrants shall be paid by the treasurer of state from the primary road fund."

Section Three. That the law as it appears in section 21 of Senate File No. 104 as enacted by the 42nd General Assembly of the State of Iowa be, and the same is hereby repealed and the following enacted in lieu thereof:

"The state board of audit shall appoint the auditor of the state highway commission, who shall give bond in the sum of fifty thousand dollars ($50,000.00) for the faithful performance of his duties. The premium on said bond shall

be paid by the state highway commission from its support fund. Said auditor shall check and audit all claims against the commission before such claims are approved by the commission, and shall keep all records and accounts relating to the expenditures of the commission. He shall, in the checking and auditing of claims against the commission, and in keeping the records and accounts of the commission, be under the direction and supervision of the state board of audit, and act as an agent of said board. The state highway commission shall furnish said auditor with such help and assistants as may be necessary to properly perform the duties herein specified. The executive council may remove said auditor from office for failure to comply with the directions and instructions of the state board of audit in performance of the duties herein required."

Approved April 19, 1927.

[fol. 39] Code of Iowa, 1927

4755-b5. Refunds. Where additional right of way has been acquired, or where bridges have been built on the primary roads under the supervision of the highway commission, and paid for out of the county road or bridge fund since April 19, 1919, said county shall be reimbursed for said right of way and said bridges out of the primary road fund within five annual payments from the taking effect of this chapter; the first payment to be made January 1, 1928; and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall, at the option of the board of supervisors of said county be placed to the credit of the county road fund or the county bridge fund. (38 G. A., ch. 237, p. 4; 39 G. A., ch. 20, p. 1; 39 G. A., ch. 188, p. 2; 40 G. A., ch. 84, p. 1; c., '24, p. 4690; 42 G. A., ch. 101, p. 5; 42 G. A., ch. 103, p. 1.)

Attempt is here made with great difficulty to apply 42 G. A. ch. 103, p. 1, as an amendment to 42 G. A., ch. 101, p. 5.

The provision of 42 G. A., ch. 101, p. 5, relating to payments made during 1927 has been omitted because purely temporary.

For that part of the amendment relating to the additional tax on gasoline, see P. 4755-b38.

4755 b38. Gasoline—Additional Tax. There is hereby levied on all gasoline imported and used within the state a license fee of one cent per gallon, which shall be in addition to the license fee levied by chapter 251-a1. All of the provisions and conditions of said chapter 251-a1 relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund. (42 G. A., ch. 103, P. 1.)

[fol. 40] Acts of 43rd General Assembly

Chapter 29. Gasoline License Fees

An act to amend the law as it appears in chapter 251-a1 of the Code of 1927, and to amend the law as it appears in section 5093-a4, and in section 5093-a5, of the Code of 1927, relating to the collection of gasoline license fees, and the reports of distributors of gasoline, and to provide for the furnishing of a bond or financial statement by distributors.

Be it enacted by the general assembly of the State of Iowa:

Section 1. That the law, as it appears in chapter 251-a1 of the Code, 1927, be and the same is hereby amended by inserting the following section in said chapter immediately after section 5093-a4 of said chapter:

"5093-a4a. Before any distributor shall engage in business as defined in this chapter, he shall first file with the Treasurer of State, a statement showing financial responsibility satisfactory to said department, or a corporate surety bond, payable to the State of Iowa in the penal sum of $1,000, conditioned that said distributor will pay to the State of Iowa any and all fees required by the law. No license shall be issued unless the bond or financial statement required herein, is attached to and delivered to the Treasurer of State with the application for said license.

Said bond or financial statement shall be approved by the secretary of state. If any distributor now engaged in business fails to file the bond or financial statement required by this act, within 30 days after the effective date thereof, his license shall be revoked."

Section 2. That the law as it appears in section 5093-a5 of the Code of 1927 be, and the same is hereby amended as follows:

By inserting after the period (.) in line 12 thereof, the following:

"If no importations are made for the preceding calendar month, a report shall be made to that effect on the forms prescribed herein and in the same manner."

Also, by striking from line 43 thereof, the word "thirty", and by substituting in lieu thereof the word "ten".

Section 3. This act being deemed of sufficient importance shall be in full force and effect from and after its passage and publication in the Des Moines Daily Record, a newspaper published at Des Moines, Iowa, and in the Muscatine Journal, a newspaper published at Muscatine, Iowa.

Senate File No. 99. Approved April 5, A. D. 1929. (Certification of Secretary of State.)

Act of the 43rd General Assembly

Chapter Twenty

Section 75, Apportionment of Gasoline Tax

Section 5093-a9, Code 1927, is amended by striking out all parts thereof after line 4, and by inserting in lieu thereof said stri-ken words, the following, to-wit:

"Two-thirds to the secondary road construction fund of the several counties of the state. The Treasurer shall apportion said two-thirds portion among the counties of the state, and shall, on the first day of each month, remit to the Treasurer of each county, the amount apportioned to the secondary road construction fund of the county."

[fol. 41] 12893. Prohibited Acts—Misdemeanors. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed,

the doing of such act is a misdemeanor. (C51, Par. 2675; R60, Par. 4302; C73, Par. 3966; C97, Par. 4905; C24, 27, Par: 12893.)

12894. Punishment for Misdemeanors. Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this state, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. (C51, Par. 2676; R60, Par. 4303; C73, Par. 3967; C97, Par. 4906; C24, 27, Par. 12894.)

4755-b5. Refunds. Where additional right of way has been acquired or where bridges or culverts have been built on the primary roads under the supervision of the highway commission and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges or culverts out of the primary road fund in seven annual payments. Provided, however, in counties where the total refund does not exceed the sum of five thousand dollars the entire refund shall be made at the time of the first annual payment. The first payment shall be made January 1, 1928, and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall, upon their receipt by the county, be placed to the credit of the secondary road construction fund unless heretofore pledged.

Payments already made under the section for which this section is a substitute shall be readjusted by the highway commission to conform herewith. (C24, Par. 4690; C27, Par. 4755-b5; 42 Ex. G. A., ch. 3; 43 G. A., ch. 20, Par. 74.)

4755-b31. Maintenance Fund for Commission—Report. There is hereby created a fund for the maintenance of the state highway commission consisting of two and one-half per cent of all moneys paid into the state treasury under the act regulatory of licenses on motor vehicles. Said fund shall be used for no other purpose than as a maintenance fund for the state highway commission and shall

be drawn out only on warrants drawn by the auditor of state on itemized vouchers approved by the state highway commission. The expenditures of said commission shall be audited by the state board of audit and a full and complete report of all said expenditures shall be published in the annual report under the act creating the state highway commission. (C24, Par. 4744; C27, Par. 4755-b31.) Referred to in Par. 4630-c1.

4755-b38. Motor Vehicle Fuel—Additional Tax. There is hereby levied on all motor vehicle fuel imported and used within this state a license fee of one cent per gallon, which shall be in addition to the license fee levied by chapter 251-a1. All of the provisions and conditions of said chapter 251-a1 relating to the levy, collection or payment of the license fee on motor vehicle fuel shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge, culvert and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund. (C27, Par. 4755-b38; 42ExG. A., ch. 3; 44 GA, ch. 108.)

Two-cent motor vehicle fuel tax, Par. 5093-a1.

[fol. 43] Note re Exhibit "D" to Bill of Complaint

Iowa, 1931, which has been omitted because Chapter 251-A1 was intended and supplied by amendment to petition.

[fol. 43] Note re Exhibit "D" to Bill of Complaint

Exhibit D is omitted because it fully appears in the record.

[fol. 44] Note re Exhibit "E" to Bill of Complaint

Exhibit E is omitted because it fully appears in the record.

[fol. 45] LETTER OF R. E. JOHNSON TO MONA MOTOR OIL COMPANY

"State of Iowa

Treasurer of State

Des Moines, Iowa.

To MonaMotor Oil Company, Council Bluffs, Iowa. E. B. Resser, President. H. M. Edinger, Vice President. Clyde Fuller, Vice President.

This is to inform you that the license issued by this department in June, 1927, authorizing you to engage in business as a licensed distributor of gasoline in the State of Iowa, is hereby revoked. All according to law. From this date it shall be unlawful for you to continue or engage in the business of distributing motor vehicle fuel in the state of Iowa.

(Signed) R. E. Johnson, Treasurer of State.

Dated October 14, 1932. 1:30 P. M.
REJ.N."

[fol. 46] EXHIBIT "F" TO BILL OF COMPLAINT

We attach hereto,

(a) Report as to motor fuel imported into Iowa.

We have endeavored to make this report in conformity with Section 5093-a5 of the Code of Iowa, 1931.

(b) Our check for $— to cover the 1 and 2-cent tax for —, 1932, on

(1) Motor vehicle fuel imported by our company into Iowa.

We are advised by our attorneys that,

(a) The State of Iowa has no power to levy a tax on our company on or by reason of motor vehicle fuel imported into Iowa;

(b) The State of Iowa does not levy a tax or license for which our company is liable.

In order to avoid a revocation of our license as a distributor, however, we are making the report attached

hereto. The payment made herewith is not in recongition of our legal liability under the Iowa statutes, but under protest and subject to our legal right to its return should it be determined that there is no liability on our part.

MonaMotor Oil Company, by —— ——, Vice-President.

[fol. 47] In United States District Court

Stay Order—Filed October 17, 1932

Upon the filing of the petition in the above entitled cause, there appeared for the plaintiff George S. Wright and Addison G. Kistle, and for the defendants J. J. Hess and G. O. Blake, and by agreement no further action is to be taken by the defendants or any of them as against the plaintiff company and the plaintiff company may without interference continue in the operation of its business until hearing is had on the temporary injunction, which by agreement is set for 10:00 o'clock A. M. on the 27th day of October, 1932. Evidence, if any, to be introduced by affidavits, but if it appearing at the hearing the cross-examination, if any, of the affiants is requested, same will be ordered upon application.

Signed at Des Moines, Iowa, this 17th day of October, 1932.

(Sgd.) Chas. A. Dewey, Judge, U. S. District Court.

[fol. 48] In United States District Court

Stay Order—Filed October 27, 1932

The above entitled cause coming on for hearing on the application of the plaintiff for a temporary injunction, it is agreed by all of the parties that the matter may be continued under the same arrangement heretofore existing until ten o'clock A. M. on the 28th day of November, 1932, which said time is set for hearing on the temporary injunction. And all parties agree that during that period there will be no interference with the plaintiff's operation of its business and that the matters complained of in all respects may stand in status quo, and that the different

officers will take no further procedure as against the plaintiff during this period within which this case is continued.

Signed at Des Moines, Iowa, this 27th day of October, 1932.

(Sgd.) Chas. A. Dewey, Judge, U. S. District Court.

[fol. 49] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS BILL OF COMPLAINT—Filed November 23, 1932

Come now Ray E. Johnson, Treasurer of the State of Iowa, John Fletcher, Attorney General of the State of Iowa; and J. J. Hess, Assistant Attorney General of the State of Iowa, and move the court to dismiss the bill of complaint filed herein by the complainants, and each count thereof, for the following reasons and upon the following grounds:

I

That the complainant's petition herein fails to conform to and comply with Rule 25 of the Federal Equity Rules of 1912, in the following particulars:

(1) That said bill of complaint is prolix, repetitious, and unnecessarily voluminous;

(2) That said bill of complaint contains many immaterial and redundant allegations and statements;

(3) That the bill of complaint is not accurate, concise and clear and a simple statement of the ultimate facts upon which the complainant seeks relief;

(4) That the bill of complaint pleads evidence and evidenciary facts in many of its paragraphs and is not limited to a clear statement of ultimate facts only.

(5) That said petition pleads statutory law and legal conclusions in many of its paragraphs, in violations of the rules of this court.

[fol. 50] II

That complainant's bill is brought against Ray E. Johnson, Treasurer of the State of Iowa, John Fletcher, Attorney General of the State of Iowa, and J. J. Hess, Assistant

Attorney General of the State of Iowa, in their representative and official capacities, and that said complaint shows that it is in truth and in fact and of necessity an action against the State of Iowa, and so shows upon its face, and because of the allegations thereof it is not maintainable in the federal court for the reason that said action is brought in violation of the eleventh amendment to the Federal Constitution of the United States.

III

That the complaint shows upon its face that an injunction is sought in this court to restrain the prosecution of an action pending in the District Court of Pottawattamie County, Iowa, and to restrain the officers of the state, defendants herein, from prosecuting said action and such action is forbidden by the Federal Judicial Code.

IV

That the bill of complaint shows upon its face that there is a misjoinder of causes of action and parties defendant in violation of the rules and practice in this court, in that:

(1) The complaint seeks injunctive relief to restrain the treasurer of state, the attorney general and the assistant attorney general from doing certain specified acts, which is a proceeding solely cognizable in equity; and

(2) Said complaint shows on its face that the plaintiff seeks therein to recover from the treasurer of state of the state of Iowa certain alleged sums claimed to have been exacted illegally; and that such cause of action is one cognizable solely at law and cannot be joined in the same action with a cause of action cognizable solely in equity.

(3) Said petition shows upon its face that complainant seeks to recover in said action on an alleged bond of the defendant, Ray E. Johnson, state treasurer, which said cause of action is one solely cognizable in a court of law and can- [fol. 51] not rightfully be joined with a cause of action cognizable solely in equity, to restrain the said state treasurer and other defendant state officers from the doing of specific acts.

(4) That the action against Ray E. Johnson is one arising in tort and cannot be joined with an action against the said Ray E. Johnson and other state officers in their representative capacities.

(5) That the prayer of the petition asks relief against Ray E. Johnson as an individual and that he is not made a party defendant as such, nor do the allegations of said petition justify such relief.

V

That the complaint shows upon its face that Chapter 103 of the Acts of the Forty-second General Assembly as subsequently amended, of which complaint is made, was duly enacted and that said chapter, and the several legal enactments of which it is amendatory were duly and legally enacted as a part of the laws of the state of Iowa.

VI

That said complaint shows on its face that the title to said act, and the acts of which it is amendatory, fully express the objects thereof and said alleged act does not refer to another law to fix said tax or object and that the same is not in violation of the Constitution of the State of Iowa.

VII

That said complaint, and the laws therein set out and referred to, shows upon its face that the enactment complained of does not impose a burden upon interstate commerce and clearly shows that the alleged license fees are not imposed upon interstate commerce in violation of the Federal Constitution as alleged.

VIII

That said complaint, upon its face and the laws and statutes therein set out and referred to, show that the alleged license fees are not a levy against property, but are license fees imposed by statutes upon gasoline or other motor vehicle fuel based on the gallonage of such commodity, and are in substance and effect an excise on the use, sale or disposition of such product within the State of Iowa, [fol. 52] and such imposition in no manner violates any law, either state or Federal.

IX

That the complaint shows upon its face that the alleged act of the defendant, State Treasurer, in revoking the plaintiff-distributor's license, is not an unlawful act, but that said alleged act is one within the legal power and authority of said state treasurer.

X

That complaint shows upon its face that prior to the commencement of this action, and on, to-wit, the 14th day of October, 1932, the state of Iowa, and Ray E. Johnson, as treasurer of the state of Iowa, began the suit in the District Court of Pottawattamie County, Iowa, which was begun within the limits of a different Federal district than the present action, the purpose and prayer of which action was to recover from the plaintiff herein certain alleged unpaid license fees of the same kind and character as those referred to in this petition; that said court having acquired jurisdiction of said subject matter prior to the commencement of this action, this action cannot now be maintained in this court.

XI

That the complaint in Count 2 thereof seeks the recovery of certain license fees alleged to have been paid to the Treasurer of the State of Iowa in April, 1932, and prior thereto, in the sum of $461,699.83, and alleges such sum to be due to the plaintiff from the Treasurer of the State of Iowa, Ray E. Johnson. That the plaintiff cannot maintain its remedy for the recovery of the license fees thus paid and is without remedy with reference thereto.

XII

That said complaint as a whole fails to show the plaintiff entitled to the relief demanded, or to any relief whatsoever.

Wherefore, said defendants respectfully pray that the bill of complaint be dismissed, and for costs.

(Signed) John Fletcher, Attorney General, John J. Hess, Assistant Attorney General, Attorneys for Said Defendants.

[fol. 53] IN UNITED STATES DISTRICT COURT

ORDER CONTINUING STAY—Filed November 28, 1932

The above entitled cause coming on for hearing in open court, by permission of the Court, plaintiff strikes and dismisses Count 2 of its petition, without prejudice.

This matter coming on for further hearing, the plaintiff insists that it have a hearing on its temporary injunction or motion for an interlocutory order, and under this situation the Court finds that it is without jurisdiction to further proceed in the case but that further proceedings must be had before a three-judge court. By agreement then by all parties the matter will stand under the present orders and arrangement until a three-judge court can be assembled to hear the temporary injunction and further proceedings in the case.

This case is therefore continued until the Court can assemble a three-judge court.

Signed at Des Moines, Iowa, this 28th day of November, 1932.

(Sgd.) Chas. A. Dewey, Judge, U. S. District Court.

[fol. 54] IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO DISMISS—Filed December 3, 1932

The above entitled cause coming on for hearing in open Court on a Motion to Dismiss, and the motion having been argued and the Court advised,

It is ordered that the Motion to Dismiss be and the same is overruled without prejudice, to raise the same questions in the answer. Defendants except.

It is further ordered that defendants have seven days to further plead, and that said cause be assigned for hearing at Des Moines, Iowa, Friday, January 6th, 1933, at ten o'clock A. M.

(Signed) W. S. Kenyon, U. S. Circuit Judge, Geo. C. Scott, Chas. A. Dewey, Judges U. S. District Court.

[fol. 55] IN UNITED STATES DISTRICT COURT

ANSWER—Filed December 9, 1932

Come now Ray E. Johnson, Treasurer of the State of Iowa, John Fletcher, Attorney General of the State of Iowa, and J. J. Hess, Assistant Attorney General of the State of Iowa, and for their answer to the Bill of Complaint in equity filed by the plaintiff herein, allege and state:

I

These answering defendants admit that Ray E. Johnson is the duly elected, qualified and acting treasurer of the state of Iowa; that John Fletcher is the duly elected, qualified and acting attorney general of the state of Iowa, and that J. J. Hess is the duly appointed, qualified and acting assistant attorney general of the state of Iowa, and that each of said officers is a resident of the state of Iowa, as alleged by complainant. These defendants further admit that the plaintiff is a corporation organized under the laws of the state of Arizona, with its principal place of business in Council Bluffs, Iowa, and that said complainant is a distributor of motor vehicle fuel as defined by the laws of the State of Iowa.

II

These answering defendants specifically allege that complainant's bill herein fails to comply with the rules of this court and particularly with Equity Rule 25 of the Federal Equity Rules of 1912, in the following particulars:

[fol. 56] (a) That said bill of complaint is prolix, repetitious, and unnecessarily voluminous.

(b) That said bill of complaint contains many immaterial and redundant allegations and statements.

(c) That the bill of complaint is not accurate, concise and clear and a simple statement of the ultimate facts upon which the complainant seeks relief.

(d) That the bill of complaint pleads evidence and evidenciary facts in many of its paragraphs and is not limited to a clear statement of ultimate facts only.

(e) That said bill of complaint pleads statutory law and legal conclusions in many of its paragraphs, in violation of the rules of this court.

III

These answering defendants allege by way of defense to complainant's bill that the same is brought against Ray E. Johnson, Treasurer of the State of Iowa, John Fletcher, Attorney General of the State of Iowa, and J. J. Hess, Assistant Attorney General of the State of Iowa, in their representative and official capacities and that said bill is in truth and in fact and of necessity an action against the State of Iowa and cannot be maintained in this court, for the reason that such action is in violation of the Eleventh Amendment to the Federal Constitution of the United States.

IV

These answering defendants further allege as a full and complete defense to the Bill of Complaint that this action is brought in this court to restrain the prosecution of an action pending in the District Court of Pottawattamie County, Iowa, and to restrain the officers of the State of Iowa, defendants herein, from prosecuting said action, and that such action is forbidden by the Federal Judicial Code.

V

Further answering and as a complete defense to the plaintiff's action, these answering defendants allege that [fol. 57] Chapter 251-A1 of the 1931 Code of Iowa and the provisions thereof relative to the license fee of two cents per gallon upon gasoline and motor vehicle fuel was enacted as a law and became effective as such on or about the 16th day of April, 1925, and that Section 4755-b38 of the 1931 Code of Iowa, providing for the levy of a one cent license fee upon gasoline and motor vehicle fuel was enacted by the Legislature of the State of Iowa and became a law on the 4th day of July, 1927. That from and after the time the aforesaid laws became effective the plaintiff herein during each month, and from month to month, paid the license fees provided therein to the State of Iowa and made monthly returns under said laws. That this complainant at no time protested against the legality of such

license fees and at no time questioned the validity of such license fees, or raised any question as to the legality and validity thereof, and at no time prior to the month of June, 1932, did said complainant protest against the payment of such license fees or question the validity thereof, and these defendants further allege that at no time from and after the passage of the acts providing for such license fees was the legality and validity thereof questioned in any of the courts of the State of Iowa or the courts of the United States.

That under the laws of the state of Iowa it is provided that a portion of the licensee fees collected under the provisions above referred to shall become a part of and be paid to the primary road fund of the several counties of the State of Iowa and that during said entire period, and in the manner provided by law, a portion of said license fees collected under the provisions of said laws were paid to the several counties of the State of Iowa for use as a part of the primary road funds in said counties, and the portion not thus apportioned to the primary road fund was used in the manner provided by law.

That relying upon the license fees which were being collected in the State of Iowa and apportioned to the primary road fund in said counties, the several counties of the state of Iowa, after the passage of said laws providing for said license fees, voted, issued and caused to be sold, primary road improvement bonds in a sum of about one hundred million dollars. That it was a matter of common [fol. 58] and universal knowledge to all persons that said bonds and the interest thereon were to be paid and retired in part by the license fees collected upon the sale of gasoline and motor vehicle fuel under the provisions of the laws of the State of Iowa, and it was well known to this complainant that said bonds were being voted and were voted, issued and sold and the obligation of the several counties incurred, relying upon the fact that in the payment thereof recourse could and would be had in part to the license fees being paid from month to month upon the sale and distribution of motor vehicle fuel under the provisions of the statutes of the State of Iowa above referred to, and that because of the provisions of law as aforesaid under which said license fees were collected and being paid, and relying upon the fact that no legal attack had been

made in any of the courts of the State of Iowa or of the United States upon the laws which provided such license fees, the voters and taxpayers of such counties voted to issue and there was issued and sold bonds of the several counties of the state, as aforesaid.

That by reason of the foregoing, all of which was well known to this complainant, this complainant is, and of right should be, estopped from now pleading the invalidity of said laws or questioning the right of the State of Iowa and its officers to continue to collect such license fees.

VI

Further answering, and as a complete defense to the plaintiff's action, these defendants allege that under the laws of the state of Iowa the license fees referred to in complainant's bill are levied as an excise upon all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. That in the conduct of complainant's business the license fees upon said motor vehicle fuel used and disposed of by complainant were and are collected from the consumers of said motor vehicle fuel by the distributor and are received by such distributor in addition to the price of the motor vehicle fuel used and disposed of. That the complainant as a distributor acquires no title to such license fees and receives the same in a fiduciary relation and as the agent for the state of [fol. 59] Iowa, and that such license fees which have been collected and which will hereafter be collected by the complainant are not the property of said distributor and the complainant is without equity in this action to restrain the state and its officers from collecting and receiving and enforcing the collection of such license fees and that complainant is in no manner prejudiced by the collection thereof by the state and its proper officers, for the reason that only such license fees are paid to the State by such distributor as are charged to and paid by the ultimate user of the motor vehicle fuel and such license fees as are paid to and collected by the state of Iowa are only such license fees as have been collected from the user or those to whom said motor vehicle fuel is sold or disposed of.

VII

Further answering plaintiff's bill of complaint, these defendants state that they are informed and creditably

believe that prior to the month of April, 1932, the plaintiff refined certain motor vehicle fuel within the state of Iowa, but allege that no such refining has been done since that time, and these defendants allege that at this time the plaintiff is not engaged in and does not refine motor vehicle fuel within the state of Iowa, and therefore these defendants deny the allegations of Paragraph 2 of the plaintiff's petition.

VIII

Further answering plaintiff's bill of complaint and Paragraphs 3 and 4 thereof, these defendants state that as to the allegations of said paragraphs they are without information, and therefore specifically deny the same.

IX

Answering Paragraph 5 of said bill of complaint, these defendants admit that the plaintiff sells large quantities of gasoline as alleged in said paragraph 5, but otherwise specifically deny said paragraph and deny that the plaintiff has been asked to pay or has ever paid any sum as a property tax upon motor vehicle fuel to the Treasurer of the State of Iowa.

[fol. 60]

X

These answering defendants herein deny the allegations of Paragraphs 6 and 7 of plaintiff's bill of complaint for want of information sufficient to form a belief, but allege that as to any motor vehicle fuel which is in interstate commerce they have at no time asserted and do not now assert and claim the right to recover license fees.

XI

As to Paragraph 8 of the plaintiff's bill of complaint, these defendants answering state that as to whether or not the radio station is operating as a part of the business of plaintiff these defendants are without information and therefore deny the same.

XII

As to Paragraph 9 these answering defendants deny the allegations of said paragraph for want of information sufficient to form a belief, and deny that the transactions therein referred to are interstate commerce.

XIII

These defendants admit that a distributor's license was issued to the plaintiff as alleged in Paragraphs 10 and 11 of the plaintiff's bill of complaint, but deny that the same was issued upon the demand of the defendant, State Treasurer.

XIV

The defendants admit the allegations of Paragraph 12 of plaintiff's bill of complaint.

XV

These answering defendants allege with reference to Paragraph 13 of plaintiff's petition that certain prosecutions were instituted against the plaintiff and its officers in the District Court of Pottawattamie , Iowa, and allege that three of said officers pled guilty to some of the charges filed and paid fines thereon and in consideration of such pleas and the payment of such fines the cases against the plaintiff were dismissed; but except as admitted all other allegations of said paragraph are denied.

[fol. 61]

XVI

As to Paragraph 14 of plaintiff's bill of complaint, these answering defendants admit that there was instituted in the name of the State of Iowa and the defendant Ray E. Johnson, State Treasurer, an action in the District Court of Pottawattamie County, Iowa, wherein it was sought to recover from the plaintiff certain unpaid license fees, but these defendants specifically deny all of the other allegations of said paragraph.

XVII

These answering defendants admit that an audit was made of the records of the plaintiff, as alleged in Paragraphs 15, 16, 17, 18 and 19, and that said audit was referred to in the action brought against the plaintiff and that demand was made for the payment of the sum found to be due by said audit. Except as admitted these answering defendants specifically deny each and every other allegation in said paragraphs contained.

XVIII

As to Paragraph 20 of plaintiff's bill of complaint, these answering defendants admit that notice was given by the State Treasurer to the plaintiff of the cancellation of its license, and allege that under the laws of the State of Iowa the State Treasurer was authorized and empowered to give notice of such cancellation. Except as admitted, all other allegations of said paragraph are specifically denied.

XIX

These answering defendants admit that the plaintiff paid the license fees referred to in Paragraph 21 of the plaintiff's bill of complaint, but specifically deny that the same were paid upon the demand of the State Treasurer and allege that the same were voluntarily paid, and except as admitted all allegations of said paragraph are specifically denied.

XX

As to Paragraph 22 these defendants allege that they are without knowledge or information as to the amount referred to, but allege that any sums that were paid were legal, and further allege that said paragraph is not an issue in this case at this time.

[fol. 62]

XXI

As to Paragraph 23 of the plaintiff's bill of complaint, these answering defendants state that they are without knowledge as to quantity of gasoline referred to in said paragraph, but allege that any payments thereon were due to the state of Iowa, and further allege that all motor vehicle fuel manufactured in Iowa by the complainant was of necessity manufactured from petroleum products imported into the state of Iowa, and when such imported petroleum products were shipped into the state of Iowa and were refined, manufactured, mixed or blended to produce a product which was used or otherwise disposed of as motor vehicle fuel within the state of Iowa, the license fees provided by the laws of Iowa attached to such product with the same force and effect as any other motor vehicle fuel used or disposed of within the state of Iowa, and the state of Iowa and its officers were entitled to receive and collect the license fees provided by law upon such product.

XXII

These answering defendants specifically deny the allegations of Paragraph 24 of the plaintiff's petition and allege that the action brought was in good faith and for the collection of taxes which were owing by plaintiff to the State of Iowa and were at the time of the commencement of said action unpaid.

XXIII

These answering defendants specifically deny the allegations of Paragraph 25 of the plaintiff's bill of complaint.

XXIV

These answering defendants deny the allegations of Paragraph 26 of said petition and allege that they are only seeking to collect from the plaintiff such license fees as are justly due to the state of Iowa under the provisions of its laws, and specifically deny any intent to interfere with the interstate business, if any, of the complainant.

XXV

The defendants specifically deny the allegations of Paragraphs 27, 28, 29, 30 and 31 of the plaintiff's bill of complaint.

[fol. 63]

XXVI

These answering defendants specifically deny the allegations of Paragraph 32 of the plaintiff's bill of complaint and allege,

(a) That Chapter 103 of the Acts of the 42nd General Assembly, as subsequently amended, of which complaint is made, was duly enacted and that said chapter and the several legal enactments of which it is amendatory were duly and legally enacted as a part of the laws of the state of Iowa.

(b) That the title to said act and the acts of which it is amendatory fully express the object thereof and said alleged act does not refer to another act to fix the license fees or object of the act and that the same is not a violation of the constitution of the state of Iowa.

(c) These defendants specifically deny that said act imposes a burden upon interstate commerce and clearly shows

that the license fee is not imposed upon interstate commerce in violation of the Federal Constitution, and the defendants further allege that none of the provisions of the Motor Vehicle Tax Law of the State of Iowa apply to foreign or interstate commerce.

(d) These defendants specifically deny that the license fees sought to be collected by the State of Iowa through its State Treasurer are levied against property, but allege that they are license fees imposed by statute upon gasoline or other motor vehicle fuel based on the gallonage of such commodity, and are in substance and effect an excise on the use, sale or disposition of such product within the state of Iowa, and that the levy of such license fees in no manner violates either the state or federal constitution.

(e) The defendants further answering deny that the license fee imposed by the statutes of Iowa is discriminatory, and allege that the same has uniform application throughout the state only to such motor vehicle fuel as is used or otherwise disposed of in this state for any purpose whatsoever.

XXVII

These answering defendants specifically deny the allegations of Paragraphs 33, 34 and 35 of the plaintiff's bill of [fol. 64] complaint and specifically allege that the laws under which the state and its officers have collected and purpose to collect license fees are in all respects valid and constitutional.

XXVIII

Further answering, these defendants deny the allegations of Paragraph 36 and allege that under the laws of the State of Iowa a distributor was required to remit to the Treasurer of the State of Iowa on the 20th day of each calendar month the amount of the license fees for such preceding month, such license fees being computed on all motor vehicle fuel used or otherwise disposed of in the State of Iowa for any purpose whatsoever, and no other or further imposition or collection of said license fees is being made or attempted to be made by the state of Iowa or its officers.

XXIX

These defendants deny the allegations of Paragraph 37 of plaintiff's bill of complaint and allege that the laws of the State of Iowa referred to in said paragraph are in all respects legal and valid and are not in violation of the Constitution of the United States.

XXX

These answering defendants deny the allegations of Paragraph 38 and specifically deny that the law as enforced by the State of Iowa imposes any burden upon interstate business in violation of the Federal Constitution.

XXXI

For answer to Paragraph 39 of the plaintiff's bill of complaint, these answering defendants specifically deny the allegations of said paragraph and allege that the cancellation of the plaintiff's distributer's license was done under the provisions of the laws of the State of Iowa, which laws are valid and enforcible as against the plaintiff.

XXXII

These answering defendants specifically deny the allegations of Paragraphs 40 and 41 of the complainant's bill.

XXXIII

These answering defendants specifically deny the allegations of Paragraph 42 of the complainant's bill, and deny [fol. 65] that they will or that they have done any act to prevent the complainant from conducting its business in the state of Iowa according to the laws of said state and that any and all things which have been done by said defendants or the state of Iowa has been done in a good faith effort to make collection from complainant of the license fees owing from it to the State of Iowa, and these answering defendants again allege that complainant is without legal damage and without equity and without remedy as against these answering defendants and against the state of Iowa, whose representatives they are.

Wherefore, these answering defendants ask that the complainant's bill be dismissed, with costs.

(Sgd.) John Fletcher, Attorney General, John J. Hess, Spl. Asst. Atty. General, Attorneys for Defendants.

Duly sworn to by John J. Hess. Jurat omitted in printing.

[fol. 66] IN UNITED STATES DISTRICT COURT

ORDER OF CONTINUANCE—Filed December 31, 1932

By agreement of all parties and with the approval of the Court, the hearings heretofore set for 10:00 A. M., January 6th, 1933, are continued until 10:00 A. M. February 6th, 1933, and all former agreements and orders heretofore made as to the matters affected by the suit remaining in status quo shall apply to this continuance.

Signed at Des Moines, Iowa, this 31st day of December, 1932.

(Sgd.) Chas. A. Dewey, Judge, U. S. District Court.

[fol. 67] IN UNITED STATES DISTRICT COURT

AMENDMENT TO BILL OF COMPLAINT—Filed February 6, 1933

Comes now the plaintiff, and leave of Court having been first obtained for amendment to its bill of complaint against the defendants, and each of them, states:

I

That the following parties are named as additional defendants, to-wit: Leo J. Wegman, Edward L. O'Connor, Clyde L. Herring and Joe F. Perry; and with reference to said parties, each and every allegation of the petition is made to apply thereto as though the said parties had been named as said defendants at the time of the filing of said petition.

II

That Leo J. Wegman was duly elected Treasurer of the State of Iowa at the November, 1932, election, for the term

commencing on the second secular day of January, 1933, and is now the duly qualified and acting Treasurer of the State of Iowa.

III

That Edward L. O'Connor was duly elected Attorney General of the State of Iowa in the November, 1932, election, his term of office to commence on the second secular day of January, 1933, and the said Edward L. O'Connor is now the duly elected, qualified and acting Attorney General of the State of Iowa.

[fol. 68]

IV

That Joe F. Perry was the duly elected Sheriff of Pottawattamie County, Iowa, at the November election, and is now the duly elected, qualified and acting Sheriff of Pottawattamie County, Iowa.

V

That Clyde L. Herring was duly elected Governor of the State of Iowa at the November, 1932, election, and is now the duly elected, qualified and acting Governor of the State of Iowa; and complainant makes the said Clyde L. Herring, Governor, party to this action, for the purpose only of complying with Section 266 of the Judicial Code of the United States, and for the purposes contained in said section, and for no other purpose.

VI

That Paragraph 36 of plaintiff's petition be amended to correct a typographical error therein, by inserting in lieu of the words "Chapter 252-A1 of the Code of 1931," in the first line thereof, "Chapter 251-A1 of the Code of 1931," and that said original petition be amended by striking from the exhibit attached to said petition, the copy of Chapter 252-A1, and inserting in lieu thereof a copy of Chapter 251-A1 of the Code of 1931.

VII

That said petition be further amended by adding thereto the following: "That said statute of Iowa, with reference to the imposition of a tax on gasoline, being the statute attached to said petition and made a part thereof, and particularly Section 5093-a8 thereof, as the same is applied to the

whole of said gasoline tax law, and in the operation and effect of said section, violates the provisions of the Constitution of Iowa and of the United States, in that the refund of the tax therein provided allows any person who shall buy or use any motor vehicle fuel for any purpose other than for operating a motor vehicle on highways, to make application for the refund of 3 cents per gallon from the officers of the State of Iowa, and that the Treasurer of the State of Iowa has provided blanks for the purpose of allowing persons using motor vehicle fuel for other purposes than for operating motor vehicles on highways, to obtain from the funds [fol. 69] received as license or tax on gasoline, a refund of 3 cents per gallon upon all gasoline used for other purposes than the operating of a motor vehicle on the highway. And upon the filing of said blanks, the Treasurer of the State of Iowa, and Leo J. Wegman, the present Treasurer of the State of Iowa, is refunding to any person who shall buy or use any motor vehicle fuel for any other purpose than operating a motor vehicle on highways, the sum of 3 cents per gallon on all gasoline so used. And that since the enactment of said laws, there has been refunded to such persons so using gasoline, in excess of Two Million Dollars; and during the year 1932 the amount of money so refunded to such users was in excess of One Million Dollars.

VIII

That the said law, as provided by Section 5093 a8 Code of 1931, and the procedure adopted and the method allowed by the State Treasurer of making such refunds, is a direct violation of the Constitution of Iowa and of the United States, and of the section more particularly referred to in the petition, in that in the enforcement of said law in the manner in which the same is sought to be carried out by the officers, defendants in this action, the result is to impose, or to attempt to impose a tax upon the plaintiff as a distributor, and other distributors, for the benefit of any person who shall buy or use any motor vehicle fuel for any other purpose than the operation of a motor vehicle on highways; and that the tax so imposed, or attempted to be imposed by the defendants, under their construction of the laws above referred to, imposes on one class of persons, to-wit, the distributors of gasoline, a tax for the benefit of another class of persons,

to-wit, the persons who shall buy or use any motor vehicle fuel for any other purpose than that of operating a motor vehicle on the highway. And that the said law and the attempted enforcement thereof is in direct violation of the Constitution of the United States and of the State of Iowa, in that it is the levying of a tax for other than a public use or public benefit. And the attempt of the officers of the State of Iowa to assert as against the Mona Motor Oil Company the [fol. 70] claim of liability for the payment of this tax; and the acts of the officers of the State of Iowa in refunding to the users from whom no tax is sought to be or has been collected the amounts as above set out, is in direct violation of the constitutional rights of this plaintiff, and of the Constitution of Iowa and of the United States, and particularly of the section referred to in plaintiff's petition.

Wherefore, plaintiff prays as in the original petition.

Wright & Baldwin. (Sgnd.) Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Attorneys for Plaintiff.

Duly sworn to by Clyde Fuller. Jurat omitted in printing.

[fol. 71] Exhibit to Amendment to Bill of Complaint

Chapter 251-A1

Motor Vehicle Fuel Tax

5093-a1. Amount of fee. A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided. (C27, Sec. 5093-a1; 44GA, ch. 108.)

Additional fee of one cent, Sec. 4755-b38.

5093-a2. Definition of terms. The term "distributor" as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be used

within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary motor vehicle fuel tank attached to and forming a part of such motor vehicle, not more than twenty gallons of motor vehicle fuel without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa.

"Motor vehicle fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose, except the products commonly known as kerosene and/or distillate or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel. (C27, Sec. 5093-a2; 44GA, ch. 108.)

5093-a3. Sale price placard—misdemeanor—penalty. Any person who sells or offers for sale at retail motor vehicle fuel in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the total sale price per gallon including license fee, of all grades of motor vehicle fuel sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars or imprisonment in the county jail for a period not to exceed thirty days. (C27, Sec. 5093-a3; 44GA, ch. 108.)

5093-a4. Certificate—license. Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of motor vehicle fuel in this state,

file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the state of Iowa, and the principal place of business of such distributor. If such distributor is a firm or co-partnership, the certificate shall also contain the names and addresses of the several persons constituting same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

[fol. 72] Each distributor now engaged in business as herein defined, shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in such business, shall, before beginning the manufacture or sale of motor vehicle fuel within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section. (C27, Sec. 5093-a4; 44GA, ch. 108.)

Referred to in Sec 5093-a7.

5093-e2. Distributor—requirements. Before any distributor shall engage in business as defined in this chapter, he shall first file with the treasurer of state a statement showing financial responsibility satisfactory to said department, or a corporate surety bond payable to the state of Iowa in the penal sum of one thousand dollars, conditioned that said distributor will pay to the state of Iowa any and all fees required by the law. Said bond, or financial statement, shall be approved by the treasurer of state. No license shall be issued unless the bond, or financial statement, required herein is attached to and delivered to the treasurer of state with the application for said license. If any distributor now engaged in business fails to file the bond, or financial statement, required by this section within

thirty days after the effective date thereof, his license shall be revoked. (43GA ch. 29, page 1.)

5093-a5. Reports—remittance—rebates and penalties. On or before the 20th day of each calendar month each distributor of motor vehicle fuel shall file in the office of the treasurer of state, at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of motor vehicle fuel and or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoice gallonage of each and every tank car or other receptacle in which motor vehicle fuel is imported into the state of Iowa. If no importations are made for the preceding calendar month, a report shall be made to that effect on the forms prescribed herein, and in the same manner. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of 3% of the invoice gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any motor vehicle fuel in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state, the said treasurer is authorized to certify to the amount of the license fee so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the motor vehicle fuel fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in Sec. 5093-a8.

If any distributor of motor vehicle fuel shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees [fol. 73] are paid or collected. If any such distributor shall fail to pay such license fees and penalties within ten days

after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition, whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42GA, ch. 248) nor any of its provisions shall apply to foreign or interstate commerce. (C'27, Sec. 5093-a5; 43GA, ch. 29, Sec. 2; 44GA ch. 108.)

Referred to in Sec. 5093-a7.

5093-b1. Tank car reports—inspection of books. Every railroad company, or other person, firm or corporation transporting motor vehicle fuel in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car, or other conveyor of motor vehicle fuel received at the station or place during the preceding calendar month, the name of the consignor, the name of the consignee, the number of gallons of motor vehicle fuel and/or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of motor vehicle fuel as herein defined shall be subject to inspection during ordinary business hours by the treasurer or his representatives. (C'27, Sec. 5093-b1; 44GA, ch. 108.)

Referred to in Sec. 5093-a7.

5093-a6. Books open to inspection.—The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of motor vehicle fuel shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but

any information gained by the treasurer of state or such representative by such investigation, shall be confidential, and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars. (C'27, Sec. 5093-a6; 44GA, ch. 108.)

5093-a7. Misdemeanor—penalty.—Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make, the reports or certificate to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of motor vehicle fuel, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093-a4, 5093-a5 and 5093-b1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor. (C'27, Sec. 5093-a7; 44GA, ch. 108.)

5093-a8. Reimbursement—procedure—false statement.—Any person who shall buy or use any motor vehicle fuel for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or air-craft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or [fol. 74] who shall purchase or use any motor vehicle fuel for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid to the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase, which statement shall set forth the total amount of motor vehicle fuel so purchased, paid for and used by such consumer other than for propelling motor

vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state, and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from the funds collected hereunder, the amount of such license fee paid by such consumer on motor vehicle fuel used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose, within ninety days after the date on which such motor vehicle fuel shall have been purchased, as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for the refund of any money or license fee as herein provided, or who shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars. (C27, Sec. 5093-a8; 44GA, chs. 108, 124.)

Referred to in Section 5093-a5, 5093-a10.

5093-a9. Distribution of proceeds.—License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. Two-thirds to the secondary road construction fund of the several counties of the state. The treasurer shall apportion said two-thirds portion among the counties of the state in the ratio that the area of each county bears to the total area of the state, and shall, on the first day of each month, remit to the treasurer of each county the amount apportioned to the secondary road construction fund of the county. (C27, Sec. 5093-a9; 43GA, ch. 20, Sec. 75.)

5093-a10. Refunds quarterly.—The refunds provided for in Section 5093-a8 shall be made quarterly by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state. (C27, Sec. 5093-a10.)

5093-a11. Employees—appropriations.—The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein, and to pay the cost of postage, equipment, supplies and printing used by the department. (C'27, Sec. 5093-a11; 44GA, ch. 125.)

5093-a12. Act separable.—If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter. (C'27, Sec. 5093-a12.)

[fol. 75] In United States District Court

Amendment to Answer—Filed February 10, 1933

Come now the original defendants herein, Ray E. Johnson, Treasurer of the State of Iowa; John Fletcher, Attorney General of the State of Iowa; J. J. Hess, Assistant Attorney General of the State of Iowa, and Percy A. Lainson, Sheriff of Pottawattamie County, Iowa, and with leave of court first had and obtained, file this amendment to their answer by adding thereto the following:

XXXIII

Further answering that part of complainant's bill in which if is alleged that the titles to said acts are insufficient to comply strictly with the Iowa Constitution and the substance of said acts do not completely meet the requirement of the Iowa Constitution in that they do not state the object of the tax, these defendants, in addition to denying said allegations, assert and state that said allegations of complainant's bill do not show any violation of any right of the complainant under the Constitution and laws of the United States, and that said allegations do not raise a federal question.

XXXIV

Further answering complainant's bill, and particularly the allegations thereof in which it is claimed that the statutes of the state of Iowa with reference to the imposition of a license fee on motor vehicle fuel is a burden on inter [fol. 76] state commerce and a violation of the commerce clause of the Constitution, these defendants allege that under the statutes of the state of Iowa that there is no duty upon the importer of motor vehicle fuel either to report to the state of Iowa, or to pay license fees to the State of Iowa until the expiration of at least twenty days after said motor vehicle fuel has come to rest in Iowa and been unloaded in Iowa; that the statutes of the State of Iowa require the importers of motor vehicle fuel to file a report on the twentieth of each month of the importations during the preceding month, and the form of said report refers only to such motor vehicle fuel as was unloaded during the preceding month, and that under such circumstances the imposition of said motor vehicle license fee cannot possibly be a burden on interstate commerce or an attempt to tax motor vehicle fuel moving in interstate commerce. That under the provisions of the laws of the State of Iowa as administered by the officers of the State of Iowa, and particularly by the Treasurer of the State of Iowa, whose duty it is to collect said tax, no motor vehicle fuel tax payer in Iowa has ever been asked to even report motor vehicle fuel in Iowa until the expiration of at least twenty days after said motor vehicle fuel came to rest, and by reason thereof said officers of the State of Iowa are acting strictly in accordance with the provisions of the Iowa statute and are not doing anything which in any way imposes a burden on interstate commerce.

XXXV

Further answering complainant's bill and particularly that part thereof in which it is claimed that there is a discrimination between imported gasoline and gasoline refined in the State of Iowa, these defendants allege that the act imposing the one-cent license fee specifically provides that "all of the provisions and conditions of said Chapter 251-A1, relating to the levy, collection and payment of license fee on motor vehicle fuel shall apply with equal force

to the license fee levied herein;" that the provisions and conditions of Chapter 251 AF, relating to the levy of the license fee are that said motor vehicle fuel must be used or otherwise disposed of in Iowa and if said provision of the one cent act is to be given effect it must be held that [fol. 77] the one cent act is applied under identically the same conditions as the two cent act, and therefor that the license fee in both cases is levied upon all motor vehicle fuel used or otherwise disposed of in the State of Iowa without reference to its place of origin, and therefore there can be and is no discrimination. That the word "imported", as used in the one cent statute, which is Section 4755 b38, must be regarded as meaningless surplusage, and obviously used and intended to emphasize the thought that the act was intended to apply to all motor vehicle fuel, because all motor vehicle fuel which gets into the State of Iowa is imported in some form.

Moreover, the officers of the state of Iowa, consistently and uniformly, and without any discrimination whatever, have imposed and collected the license fees against all motor vehicle fuel used or otherwise disposed of in the state of Iowa, whether the same was refined before it came into the state of Iowa or after it came into the State of Iowa, and that there never has been any discrimination and there never has been any violation of the guaranty of equal protection of the law; and that this court is bound by the interpretation placed on said law by the administrative officers of the State of Iowa, and can only determine from the way said law is operated whether any right of complainant under the Constitution and laws of the United States has been violated.

Moreover, there is not now, and was not at the time this action was commenced, any motor vehicle fuel being refined in Iowa, so that there cannot now, even under complainant's interpretation of the statute, be any discrimination.

Furthermore, if the interpretation contended for were to be adopted, and if the officers of the State of Iowa were to adopt that interpretation in their administration of the law, and if the complainant was in fact now refining gasoline in Iowa, the discrimination, if any, would be in its favor and there would be no right of its violated, and nothing of which it could complain.

In addition, even though the one-cent act could be held void, it could only go to the amount of license fees owing by the complainant and would not justify the complainant's [fol. 78] failure to pay any license fees, and would not justify an injunction against the collection of motor vehicle license fees from complainant.

XXXVI

Further answering complainant's bill, and particularly that part thereof in which it is claimed that there has been an interference with the interstate business of complainant, in that the State of Iowa, or the officers of the State of Iowa, have attempted to levy or impose a motor vehicle license fee upon sales of motor vehicle fuel in the State of Iowa to be delivered and used outside the State of Iowa, these defendants allege the fact to be that the officers of the State of Iowa have never attempted to levy any license fee on such motor vehicle fuel; that the Treasurer of the State of Iowa has furnished to all payers of motor vehicle license fees a blank form of report in which they are asked to list all such sales and to exempt the amount thereof from the gallonage on which they were asked to compute the tax, and the officers of the State of Iowa have never denied or disputed any report of the MonaMotor Oil Company on account of any claim for deduction of motor vehicle fuel so disposed of outside the State of Iowa.

XXXVII

Further answering said bill of complaint, and particularly that part of the amendment thereto in which it is asserted that the users of motor vehicle fuel for purposes other than propelling motor vehicles upon the public highway are allowed a refund, renders said act unconstitutional and void, these defendants allege that the allowance of said refund operates equally upon all users of gasoline for purposes other than the propelling of motor vehicles upon the highway and that there is nothing in the Constitution or laws of the United States which prohibits such refund by a state, and that the making of said refund does not violate the Constitution or the laws of the United States, and no Federal quesion is raised thereby.

That the refund provisions of the Iowa statute does not authorize nor permit the collection of the license fees from

one class for the benefit of another class, that said statute [fol. 79] limits the refunds to be paid to any consumer of motor vehicle fuel to

"the amount of such license fee *paid by such consumer* on motor vehicle fuel used for purposes other than propelling motor vehicles as hereinbefore provided." (Sec. 5093-a8.)

And since such consumer seeking a refund is limited to a recovery of the license fee paid by him, there is no taking of one person's property for the benefit of another and nothing which violates any right guaranteed to complainant under the Constitution and laws of the United States.

That in any event, even though Sec. 5093-a8, which is the section providing for the refund were declared to be unconstitutional and void, such decision should be limited to nullifying that particular section and it would not be a defense to the payment of a tax lawfully imposed, unless the court should determine that the Legislature did not intend to permit the act to stand without that section. But the Iowa statute specifically provides (Sec. 5093-a12), that if a part of said act is declared unconstitutional or void it shall not affect the remaining portion. And the court, therefore, has before it an expression of the legislative intention on that point. So that, even though the court should determine that the refund provision were void, it would not thereby render void the portion of the act which imposes the license fee.

XXXVIII

Further answering complainant's bill, these defendants allege and state that they do not intend to commence, and have not threatened to commence any further criminal prosecutions against the officers of the MonaMotor Oil Company; that all the prosecutions heretofore brought against said Company and its officers have been fully disposed of and are not now pending; that these defendants have not threatened and do not contemplate any seizure of the property of the complainant by any summary process and are seeking only to collect from the complainant a tax due the State of Iowa by a suit in a court of law in the State Court at Council Bluffs, Iowa, in which they are asking a money judgment in favor of the State of Iowa; that all of the matters alleged in plaintiff's petition can be as-

serted by way of defense to said cause of action; that by [fol. 80] reason of the matters herein alleged, no irreparable injury is threatened to complainant and complainant is provided with a plain, speedy and adequate remedy at law and complainant's bill is therefore lacking in equity.

Wherefore, these defendants pray that complainant's bill be dismissed as prayed in their original answer.

(Sgnd.) Edward L. O'Connor, C. E. Hamilton, L. W. Powers, Attorneys for Defendants.

Duly sworn to by L. W. Powers. Jurat omitted in printing.

[fol. 81] In United States District Court

Answer of Additional Defendant—Filed February 10, 1933

Come now Leo J. Wegman, Treasurer of the State of Iowa; Edward L. O'Connor, Attorney General of the State of Iowa, and Joe F. Perry, Sheriff of Pottawattamie County, Iowa, and enter their voluntary appearance herein, and by way of answer to the bill of complaint, state:

I

That these defendants admit that Leo J. Wegman is now the duly elected Treasurer of the State of Iowa for the term commencing on the second secular day of January, 1933, and is now acting as Treasurer of the State of Iowa; and that Edward L. O'Connor is now the duly elected Attorney General of the State of Iowa for the term commencing on the second secular day of January, 1933, and that the said Edward L. O'Connor is now the acting Attorney General of the State of Iowa; and that Joe F. Perry is the duly elected Sheriff of Pottawattamie County, Iowa, for the term commencing on the first of January, 1933, and is now acting as said Sheriff; and that Clyde L. Herring is the duly elected Governor of Iowa for the term commencing on the first secular day of January, 1933, and is now acting as such Governor.

II

For further answer these defendants adopt as their answer herein the answer heretofore filed by their co-defend-

ants and the amendment thereto; and adopt all the allega-
[fol. 82] tions of said answer and amendment thereto of their co-defendants as fully as though said answer and amendment thereto, and each of the allegations thereof, were fully set out herein.

Wherefore, these defendants pray that complainant's bill be dismissed.

(Sgnd.) Edw. L. O'Connor, C. E. Hamilton, L. W. Powers, Attorneys for Defendants.

Duly sworn to by L. W. Powers. Jurat omitted in printing.

[fol. 83] IN UNITED STATES DISTRICT COURT

OPINION—Filed March 29, 1933

Before Kenyon, Circuit Judge, and Scott and Dewey, District Judges

DEWEY, District Judge:

Complainant's bill attacks the validity and method of enforcement of the motor vehicle fuel tax statutes of the state of Iowa.

Jurisdiction is invoked on diversity of citizenship of the parties and on account of a controversy arising under the Constitution and laws of the United States, the amount in controversy exceeding the limitation.

The complainant insisting upon interlocutory orders, a three-judge court was instituted and convened and the cause came on for hearing before such court on the demand for a temporary injunction. Then the court was assembled and the cause called, by agreement of the parties, the trial was made a final hearing on the merits.

In 1925 the 41st General Assembly of the State of Iowa, in keeping with the demand for better roads all over the United States, passed an act having to do with the improvement of the highways of the state imposing a license fee or tax on gasoline or motor vehicle fuel used or otherwise disposed of in the state of Iowa, and providing for a levy, collection, payment, refund and distribution. This act has been amended and now appears in the Code of Iowa, 1931,

as Chapter 252-A1, the entire chapter being set out as Addenda A attached hereto.

[fol. 84] That chapter, which may be referred to herein as the two-cent statute and, in so far as the same is material here, provides as follows:

"5093-a1. Amount of fee. A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this State for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided.

"5093-a2. * * * The term 'distributor' as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be used within the state or sold or otherwise disposed of by him within the state for use in the state. * * *

"5093-a3. * * * Any person who sells or offers for sale at retail motor vehicle fuel in the state, shall keep posted in a conspicuous place, * * * a placard showing the total sale price per gallon, including license fee, of all grades of motor vehicle fuel sold, said placard to have printed thereon the words 'state license fee included.'

When quantity discounts or rebates are allowed, such fact shall be shown on the placard.' * * *

"5093-a4. * * * Each distributor * * * shall * * * procure a license from the treasurer of state permitting said distributor to transact said business within the State of Iowa. * * * *

"5093-c2. * * * he (distributor) shall first file with the treasurer of state a statement showing financial responsibility satisfactory to said department, or a corporate surety bond payable to the state of Iowa in the penal sum of one thousand dollars, conditioned that said distributor will pay to the state of Iowa any and all fees required by the law. * * *

"5093-a5. * * * On or before the twentieth day of each calendar month such distributor * * * shall file in the office of the treasurer of state, at Des Moines, Iowa,

a report prescribed and furnished by said treasurer, showing the total number of gallons of motor vehicle fuel * * * imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which motor vehicle fuel is imported. * * * At the same time he shall remit to the treasurer the amount of the license fee for such preceding month * * * a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any motor vehicle fuel in the possession of a licensed distributor is destroyed * * * before being sold or used by him * * * the said treasurer is authorized to certify the amount of the license fees so paid thereon to the auditor of state as a refund. * * *

If any distributor * * * shall fail to remit to the treasurer of state on or before the twentieth of each month to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue. * * * If any such distributor shall fail to pay such license fees and penalties within ten days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalties; and in addition, whenever any licensed distributor fails to render the prescribed reports, * * * or fails to pay the license fees due within the prescribed time, the treasurer of state may revoke the license of such distributor. * * * Neither this act nor any of its provisions shall apply to foreign or interstate commerce. * * *

"5093-a6. * * * The books, records, papers * * * and equipment of any distributor which pertain to the sale of motor vehicle fuel shall be subject to inspection. * * *

[fol. 85] "5093-a7. * * * Any distributor * * * who shall fail to make * * * the reports * * * or shall refuse to permit the treasurer to examine the books * * * of such distributor pertaining to the sale of motor vehicle fuel * * * shall be guilty of misdemeanor. * * *

"5093-a8. * * * Any person who shall buy or use any motor vehicle fuel * * * for any other commercial use except for propelling motor vehicles operated in whole or

in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him. * * *

"5093-a9. Distribution of proceeds. License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. Two-thirds to the secondary road construction fund of the several counties of the state. The treasurer shall apportion said two-thirds portion among the counties of the state in the ratio that the area of each county bears to the total area of the state, and shall, on the first day of each month, remit to the treasurer of each county the amount apportioned to the secondary road construction fund of the county. * * *"

Two years later the 42nd General Assembly, by Chapter 101, revised and codified the statutes of the state with reference to the primary road system and the primary road fund of the state, and at the same session, by Chapter 103, amended the law as it appeared in Chapter 101. These statutes covered a different subject-matter than the two-cent statute.

The second paragraph of the first section of this amendment provides for a one-cent tax on gasoline, and as it now appears in the Code of Iowa, 1931, reads as follows:

"Sec. 4755-b38. Motor vehicle fuel—additional tax. There is hereby levied on all motor vehicle fuel imported and used within this state a license fee of one cent per gallon, which shall be in addition to the license fee levied by Chapter 251-A1. All of the provisions and conditions of said Chapter 251-A1 relating to the levy, collection or payment of the license fee on motor vehicle fuel shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge, culvert and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund."

Facts

The claim of the plaintiff that the officers of the state are enforcing the motor vehicle fuel tax statutes in an unconstitutional manner, and the affirmative defenses of the defendants require consideration of some of the facts introduced at the trial. Most of the salient facts are stipulated by the parties and are adopted as fact findings by this court.

The MonaMotor Oil Company is a foreign corporation, incorporated in Arizona and doing business in Iowa. The defendants are officers of the state of Iowa as designated. The oil company's business is quite extensive as it operates [fol. 86] 30 service stations in the state of Iowa and leases 29 other service stations; it maintains bulk stations for the storing of gasoline at Council Bluffs, Iowa, and both imports and exports motor vehicle fuel and kindred products; it imports motor vehicle fuel into Iowa in tank cars and trucks for sale through its stations and also to other distributors and dealers in the state and supplies distributors and dealers outside of the state in wholesale quantities and this business has been carried on by the oil company for many years. Up to April 1, 1932, it refined gasoline at Carter Lake, Iowa, and since that time has been blending and compounding gasoline at that place.

Carter Lake, Iowa, is in Pottawattamie County, Iowa, and is on the west side of the main channel of the Missouri River, and in moving gasoline from Carter Lake, Iowa, to other points in Iowa, it is necessary that such gasoline pass through the State of Nebraska. At Carter Lake it maintained bulk and storage tanks for the storage of gasoline, refined, blended and compounded and also purchased by said company. Sales of gasoline are made from the bulk stations at Council Bluffs, Iowa, to many dealers in Nebraska, Minnesota, South Dakota and other surrounding states, and many such deliveries are made to customers in the city of Omaha, Nebraska, from the bulk station and refinery at Carter Lake, Iowa.

On the 3d day of June, 1927, it applied for and was granted a license to transact business as a distributor in the State of Iowa from the treasurer of state. Since that time and until the commencement of this action it has made regular reports to the treasurer of state on blanks furnished by the treasurer and duly paid the taxes due as

shown by the reports filed, except payments for the months of June, July and August, 1932, were protested. That portion of the motor vehicle fuel produced, refined, blended, manufactured, or compounded within the state of Iowa during the time covered by complainant's bill and shipped through Nebraska into Iowa was mingled in Iowa with other motor vehicle fuel shipped into Iowa from outside of the state during the said period and all of such gasoline or motor vehicle fuel, whether imported or compounded, was sold at the same price when sold in Iowa. The oil company reported and paid the prescribed tax on the motor vehicle fuel blended, compounded or refined at Carter Lake, Iowa.

[fol. 87]. The report forms are headed: "Report of Motor Vehicle Fuel Imported into the State of Iowa," and provided in separate columns for information as to "Date Unloaded", "Station Where Unloaded", "Initial (and) Number (of) Tank Car", "Other Container", "Invoiced Gallonage" and "Name of R. R. or other Carrier." It then provides for a showing as to the total invoiced gallonage imported; for deductions for evaporation and loss of 3 per cent of gallonage; for gallonage sold and delivered outside of the state of Iowa, to be itemized under another form attached; for total deductions and net gallonage on which a license fee is due at three cents per gallon, and also provides for a penalty, if any.

These reports were due on the 20th of each month and required a report as to gasoline transactions occurring during the preceding month. The treasurer of state collected from the distributor a three cent gasoline tax on gasoline imported within the preceding month and unloaded in Iowa and not exported therefrom without any showing or investigation or requirement as to whether the gasoline had been sold or used by the distributor or sold to the ultimate consumer, it being assumed that such disposition was made within the 20 days from the close of the month to the 20th of the following month when the report was due. Until the commencement of this suit no question was ever raised as to the disposition of the gasoline to the ultimate consumer or user prior to the 20th day of the following month and there is no evidence in this suit that any imposition has been made on any distributor on that account. In other words, the officers required a report of each month's business done by a

distributor within the state of Iowa on the 20th day of the succeeding month and after deducting from gasoline imported and unloaded the 3 per cent for waste and a further deduction of gasoline sold that was unloaded and exported without the state, required a payment of three cents per gallon tax from the distributor of all gasoline imported and unloaded and to be sold by the distributor within the state of Iowa. If gasoline was shipped in and not unloaded it was not required to be included in the report. At one time the oil company requested the treasurer of state to treat gasoline imported to Carter Lake as being in Nebraska and called it the Omaha bulk station. They were granted this permission and subsequent reports were made on that basis. [fol. 88] Sometime in the Spring of 1932, agents of the state of Iowa reported that gasoline was being shipped into the state of Iowa by the Mona Motor Oil Company as petroleum lubricating oil, but unloaded as gasoline into the gasoline tanks at Council Bluffs and they claimed that about 40 cars were thus so handled. The invoices had been changed by employees. As originally written "gasoline" the letters "oline" were erased and the word "oil" written in place of it. It was shipped as gas oil and billed as lubricating oil, but when loaded was gasoline and when unloaded was gasoline. On investigation it was learned that these imports were not reported to the state. About April 8th or 9th, 1932, a conference was held between some of the state officers and officers of the Mona Motor Oil Company at Council Bluffs with reference to an audit. The state officers refused to permit an audit to be made by the auditors of the oil company and it was agreed that it might be made by an independent company. A few days later an audit was commenced by the independent firm of Wolf & Company and this audit was returned to the secretary of state; the audit covering the period from January 1, 1929, to March 29, 1932. Upon the receipt of this audit the state treasurer demanded fees aggregating $24,959.10 as not having been paid. The attorneys for the oil company asked for and were granted time to verify the figures of Wolf & Co. audit, and we refer to the evidence of Mr. Hess, who was at that time handling the matter as an attorney for the state, as to what followed:

"Well, I spoke to Mr. Wright about it several times, urging him to hurry the matter up so that we could get it disposed of. Mr. Johnson (State Treasurer) was urging that

the matter be gotten out of the way, and finally, about the early part of October, Mr. Petersen in the meanwhile getting in touch with the auditors of the Barnsdall Company, I think Mr. Votrian, and they had determined that the gallonage of the Wolf report was accurate, with the exception of two cars, that they were unable to place or trace or something, and I came down to Des Moines and talked with Mr. Johnson about it. He said 'If we are that near together, you go and tell Mr. Wright if they will pay this amount we will deduct the two cars, and eliminate the only matters that are questionable.' So I went and saw Mr. Wright the next morning, and talked with him, and I think perhaps with Mr. [fol. 89] Kistle, and they informed me Mr. Resser would be in town in the afternoon, and the matter would be submitted to him. I did nothing then; they were to let me know in the afternoon what Mr. Reeser said about paying. Mr. Wright phoned me while I was in court that afternoon. I did not get the message until late in the afternoon, at which time I called Mr. Kistle, or Mr. Wright's office, and Mr. Kistle was there, and he said then that they would meet with Mr. Fletcher and Mr. Johnson and myself, and show us they did not owe us anything, or something of that kind. The next morning I reported that to Mr. Johnson. Then he directed me to start this suit.

Q. Was that before the cancellation of the license?

A. Oh yes, that was before the cancellation of the license. I had previously been all over these matters with Mr. Johnson, so he knew just what the record was."

The testimony of the witness above referred to is not denied by complainant.

On the 14th of October, 1932, the state of Iowa and the state treasurer started an action in the state court to recover the fees theretofore demanded, and accompanied the same by writs of attachment on the property of the oil company. This case was later transferred to the United States District Court but was remanded on a motion of the plaintiffs, on the ground that it was an action by the state of Iowa. Also on the 9th day of April, 1932, certain informations were filed charging officers of the company with violation of the state laws in filing false and incomplete reports and returns of gasoline and motor fuel, and later, at the August, 1932, term of the district court of Pottawattamie county, Iowa, ten indictments charging the Mona-

Motor Oil Company and certain officers with violations of the state motor vehicle fuel law were returned by the grand jury of Pottawattamie county, Iowa, and upon these indictments pleas of guilty were entered by some of the officers, fines assessed, and the remaining indictments dismissed. On October 14, 1932, the state treasurer cancelled the license which had been issued to the Mona Motor Oil Company as a distributor and in writing advised the company of his action. The license was cancelled by the state treasurer upon the information contained in the Wolf & Co. audit. No notice of or hearing was held by the state treasurer of an intention to cancel the license. All this was done [fol. 90] before the suit was commenced in this court. The present state treasurer says that he has no intention of further law actions against the Mona Motor Oil Company until the present litigation is terminated and his rights are determined by the courts.

No gasoline has ever been produced or refined in Iowa, except that refined by the Mona Motor Oil Company at Carter Lake, Iowa, prior to April 1, 1932. Since that time it has at that place been blending or compounding gasoline. The L. L. Coryell Oil Company has been engaged in blending or compounding certain gasoline in Iowa from Naphtha and they have failed or refused to pay certain taxes on gasoline they have blended out of naphtha. Suit is now pending against the Coryell Company for the tax on that blended product, and the state has, through its officers, at all times insisted that the naphtha and blended gasoline are imported gasoline upon which a tax should be paid, and there has been no discrimination by the officers of the state in this regard.

Issues

The complaint was filed October 17, 1932, and is very voluminous, prolix and involved. It sets out and complains of the actions of the state officials in instituting the civil and criminal proceedings against it and revocation of its license by the state treasurer. It alleges the nature of the business carried on by the complainant and as established by the facts at the hearing, and attacks the constitutionality of the statutes. It alleges that the two-cent statute above referred to is unconstitutional and void by general allegations reiterated, and specifically complains that the act is

an imposition upon the interstate commerce carried on by the complainant and that the officers under and by virtue of the provisions of the act have been and are acting and will continue to act unlawfully in demanding under duress a cancellation of its license, criminal actions, etc., for enforcing the collection and payment on all gasoline imported by it; and their acts in so enforcing the statutes compelled and will in the future compel the complainant to pay a tax on all gasoline imported, thus interfering with its interstate business; and in treating the act in all respects as though it were a direct tax and liability of the importer to pay three cents a gallon on all motor vehicle fuel imported by it and thus make it a direct tax on gasoline instead of upon the user as contemplated by the statutes; that the cancellation of its license [fol. 91] by the treasurer was done without notice to it of the intended act of the treasurer in so cancelling the license, and the statutes of Iowa do not afford an opportunity to be heard thereon and it deprived the complainant of property without due process of law; that the manner of the collection of the tax by the state officers places on the interstate business of the complainant a direct burden; that the provision of the statutes with reference to a refund allows any person who buys or uses motor vehicle fuel for any purpose other than operating a motor vehicle on the highway to make application for the refund of the three cents per gallon from the officers of the state of Iowa, which is a direct violation of the constitution of the United States and of the state of Iowa, in that the result is to impose or an attempt to impose a tax on the complainant as a distributor for the benefit of any person who shall buy or use any motor vehicle fuel for any other purpose than the operation of the motor vehicle on the highways and imposes on the distributors a tax for the benefit of another class of persons, to-wit, the users of the motor vehicle fuel for purposes other than the operation of motor vehicles on the highways; that the attempted enforcement thereof is in violation of the constitution in that it is the levying of a tax for other than a public use or a public benefit.

In addition to the attack on the two-cent statute, the complaint alleges that the statute providing for the additional one-cent levy is unconstitutional for several additional reasons; first, that the law was never enacted—as Chapter 103 of the Acts of the 42d General Assembly above referred to in amending Chapter 101, wherein is contained the enact-

ment with reference to the one-cent tax, strikes therefrom the words and figures "three" and does not enact anything in lieu thereof; the insertion of the provisions with reference to the one-cent tax being, therefore not a real part of the act itself. Second, that the title of the act expresses no object to which the tax is applied, but refers to another law to fix such tax or object in violation of the constitution of the state of Iowa. Third, that the proposed tax is a property tax and imposes a burden on interstate commerce and denies to the distributor the equal protection of the law; that it also discriminates against the complainant as an importer of gasoline in favor of any gasoline that might be [fol. 92] manufactured and used in the state of Iowa. Fourth, that this tax imposes a direct burden on interstate commerce. Fifth, that it imposes on the complainant the duty to report on imported gasoline only and attempts to compute the tax on such imports only and attempts to enforce the payment of a tax laid and levied upon users of the gasoline upon the distributor without any provision in the statute to make a distributor liable for the payment of such tax.

The defendants in answering the bill of complaint allege affirmative defenses that the bill is in truth and in fact an action against the State of Iowa and cannot be maintained in this court; that it is an action brought to restrain the prosecution of an action pending in the state courts of Iowa and to restrain the officers of the state of Iowa from prosecuting said action; that after the enactment of the laws attacked and referred to herein, plaintiff paid the tax without protest prior to the month of June, 1932; that no attack had been made upon the constitutionality or legality of any of these acts prior to this suit in the courts of the state of Iowa or the federal courts, and that in reliance upon the license fees and the constitutionality of the provisions of the statutes in question, the counties of the state of Iowa, in contemplation of the payment of the taxes, voted road improvement bonds in the sum of $100,000,000; that the complainant knew of this situation and by reason of its failure to protest or challenge the validity of the laws in question prior thereto would injure the counties relying thereon and complainant is now estopped from doing so; that as an additional defense the answer alleges that under the statutes the distributor was only a collector of license

fees; that in so collecting such fees it holds them as an agent of the state of Iowa; that it has collected and will collect future license fees and now holds certain license fees which it has collected from the users of gasoline on the highways and that the complainant is, therefore, without equity in this action to restrain the state and its officers from collecting and receiving the collection of such license fees; that complainant is in no manner prejudiced by the action of the state and its proper officers, as they are only endeavoring to charge and collect from the distributors that which the distributor has already charged and collected from the ultimate users of motor vehicle fuel.

[fol. 93] We have, perhaps, not touched upon all of the claims of the parties as the pleadings are voluminous, but in general they are as above set forth.

The relief demanded by the petitioner in this suit is for injunctions, temporary and permanent, enjoining and restraining the defendants from taking or commencing any further steps or proceedings, suits or actions to collect the motor vehicle fuel taxes and taking any steps to prevent the plaintiff from transacting business in the state of Iowa.

Jurisdiction

The defendants challenge the jurisdiction of this court on the ground that the suit is against the state as in contravention of the 11th Amendment to the Constitution. The Supreme Court of the United States has repeatedly held that the federal courts have jurisdiction to restrain officers of the state acting or purporting to act under unconstitutional statutes or acting under color of state statutes in an unconstitutional way or manner.

Their last pronouncement on this question is found in the case of Sterling et al. v. Constantin et al., 287 U. S. 378, decided December 12, 1932. Therein it is said:

"The District Court had jurisdiction. The suit is not against the state. The applicable principle is that where state officials, purporting to act under state authority, invade rights secured by the Federal Constitution, they are subject to the process of the Federal courts in order that the persons injured may have appropriate relief. * * * Nor does the fact that it may appear that the state officer in such case, while acting under color of state law, has ex-

ceeded the authority conferred by the state, deprive the court of jurisdiction. * * *

"As the validity of provisions of the state constitution and statutes, if they could be deemed to authorize the action of the Governor, was challenged, the application for injunction was properly heard by three judges. * * * The jurisdiction of the District Court so constituted * * * extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decision of such of the questions as in its opinion effectively dispose of the case."

Injunction proceedings to restrain state officers from enforcing state statutes that violate the federal constitution may be maintained against such officers. Terrace v. Thompson, 263 U. S. 197; Public Service Co. v. Corboy, 250 U. S. 153; Philadelphia Co. v. Stimson, 223 U. S. 605; Western Union Tel. Co. v. Andrews, 216 U. S. 165; Ex parte Young, 209 U. S. 125; Smith v. Tillitson, 29 Fed. (2d) 535, 537.

[fol. 94] Concurrent Jurisdiction

We are also met with the claim of the defendants that to grant the relief asked in this case would result in a stay of the proceedings instituted by the state of Iowa in the state courts of Iowa.

Section 265 Judicial Code, Sec. 379, Title 28, U. S. Code, provides that "the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except * * * in bankruptcy."

It is fundamental that where a state and federal court have concurrent jurisdiction of the same parties and subject-matter, the tribunal where the jurisdiction first attaches retains it exclusively and will be left to determine the controversy and every issue properly arising in the case.

And it has been repeatedly held that the federal court cannot interfere with a proceeding in a state court by injunction. Riehle v. Margolies, 279 U. S. 218; Essanay Film Co. Kanes, 258 U. S. 358, 361; Hull v. Burr, 234 U. S. 712; U. S. v. Parkhurst-Davis Co., 176 U. S. 317; Dial v. Reynolds, 96 U. S. 340; Haines et al. v. Carpenter, 91 U. S. 254, 257.

In the words of Mr. Justice Bradley in Haines v. Carpenter, supra,—"The great object of the suit is to enjoin and stop litigations in the state courts, and to bring all the litigated questions before the Circuit Court. This is one of the things which the federal courts are expressly prohibited from doing."

The court first obtaining jurisdiction of a controversy should be permitted to proceed without interference. We are, therefore, expressly enjoined from interfering in any way with the proceedings now pending in the state court by the state or its officers in this case involving the same parties and the same subject matter.

It is argued, however, that the proceedings in the state court are only an incident in this case and that it is one of the acts on the part of the officers of the state to compel this complainant by duress to pay taxes on motor vehicle fuel under an unconstitutional statute or in an unconstitutional manner.

Since the institution of this suit by the MonaMotor Oil Company other oil companies have started similar suits in this court and the state courts in Iowa asking similar re- [fol. 95] lief and, as the MonaMotor Oil Company is refusing to pay further taxes under the Iowa statutes, or paying them under protest, we feel that the questions raised by the claimant in this suit should be determined in so-far at least as they do not interfere with the issues raised by the state in the suit now pending in the District Court of Pottawattamie County, Iowa.

Interpretation of the Statutes

One of the contentions of the complainant is that the two-cent statute is unconstitutional, because it imposes a burden on interstate commerce; the argument being that as Section 5093-a5 provides that the distributor shall report as to all motor vehicle fuel imported during the preceding month and the invoiced gallonage of each tank car or other receptacle in which motor vehicle fuel is imported into the state, followed by a provision that at the same time he shall remit the amount or license fee for the preceding month, is a pronouncement requiring payment of a fee for imports only which would be an interference with motor vehicle fuel imported by it and exported to other dealers.

It is also a claim that the statute is unenforceable and void because of indefiniteness. These among other claims require an interpretation by the court of the several motor vehicle fuel statutes.

The two-cent statute is levied on all gasoline used or otherwise disposed of in the state, but under the familiar doctrine of ejusdem generis where general terms follow specific terms they are limited and applicable only to the same general class as the specific terms used. The two-cent statute, as far as the levy is concerned, should be read as meaning, —used or consumed in the state.

The liability for the payment of the tax by Section 5093-a1 is definitely placed on any person using motor vehicle fuel within the state, unless the same shall have been previously paid. The statute, therefore, having provided for the levy and the persons liable, expressly states in Section 5093-a1 that these fees or taxes shall be collected and disposed of in the manner hereinafter provided.

The tax is imposed against the gasoline used or consumed on the highways of the state; State v. Northern Iowa Oil Co., 209 Ia. 980; but the liability for its payment is placed upon the persons using or consuming the fuel hence it is an excise rather than a direct tax. Bowman v. [fol. 96] Continental Oil Co., 256 U. S. 642.

As to the collection of the tax the legislature has set up a plan whereby all distributors of gasoline, defining them, are to take out licenses without cost from the state authorizing them to do business within the state of Iowa as such distributor so long as they comply with the statutes, that they file a bond or cash deposit at the time the license is issued to them conditioned on payment to the state of Iowa of any and all fees required by the law. Section 5093-a2.

Further then in carrying out his duties as a distributor, the law provides that on or before the 20th day of each calendar month the distributor shall file in the office of the treasurer a report showing the number of gallons of motor vehicle fuel imported by him during the preceding calendar month, the invoiced gallonage of each car or other receptacle in which the fuel was imported, the date of receipt, unloading point, and the identification of the tank car. In the same Section 5093-a5 is a requirement that the distributor at the time of making this report shall remit to the

treasurer the amount of the license fee for such preceding month.

This provision in Section 5093-a5 is not as clear as it should be, but in the light of the other provisions of the statute, it is perfectly apparent that it was the intention of the legislature that payment should be made on the 20th day of each month for all gasoline imported during the preceding month, unloaded and to be used or consumed within the state of Iowa. If is very apparent that the distributor may be required to pay some of the license fees in advance, based upon the report filed if he has not collected on all of the gasoline imported and unloaded by him during the preceding month.

That it was the intention of the legislature to require of the distributor payment of the tax, but that it should not be a tax assessed against him but only as an administrative feature in the enforcement of the act, is clearly shown by an amendment to Section 5093-a5 which was made by the 42nd General Assembly in 1927. The original act provides as follows:

"Sec. 5. Monthly report—remittance. Each distributor of gasoline shall, on or before the twentieth of each calendar month, forward to the treasurer, a statement, sworn to by one of its principal officers, showing the total number of gallons of gasoline imported by him and the total number of gallons of gasoline sold or otherwise disposed of for the preceding calendar month and shall at the same time remit to the treasurer the amount of the license fee for such [fol. 97] preceding month for which such distributor is liable." Chap. 6 Laws of the 41st General Assembly.

The enactment of the 42d General Assembly in lieu of the foregoing was:

"On or before the twentieth day of each calendar month each distributor of gasoline shall file in the office of the treasurer of state at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of gasoline imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which gasoline is imported into the state of

Iowa. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss. * * *." Sec. 4, Chap. 248 (Senate File 347), Laws of the 42nd General Assembly.

It is observed then that the legislature took out of the original act the statement, "and the total number of gallons of gasoline sold or otherwise disposed of," and also the phrase, "for which such distributor is liable." It is perfectly apparent, therefore, that the purpose and intention of the legislature was to omit from the act any statements therein that could in any wise be interpreted as an intention on their part to levy a tax on the gasoline sold or otherwise disposed of by the distributor and which might be construed as making the distributor primarily liable for the tax itself. They also placed into the act the provisions with reference to the report to include the date of receipt, unloading point, etc. Any doubt of the construction should be dispelled when we consider that the legislature at the same time provided that if after the license fees are so remitted and paid before being sold or used by the distributor any gasoline is destroyed, the state would reimburse the distributor therefor. Also, there was added into the new act a provision that in computing the amount of the license fee which should be advanced and paid by the distributor, there was to be an allowance to him of a three per cent deduction from the invoiced gallonage imported for evaporation and loss.

A refund is permitted to any consumer who has purchased motor vehicle fuel for any commercial use except propelling motor vehicles operated on the highways of Iowa to the amount of the license fee paid by him.

The ultimate consumer using the highways of the state pays the tax.

And the provision of Section 5093-a1, that "Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been prviously paid," must mean, when construed with the other [fol. 98] provisions of the act, "unless the same shall have been previously paid" by some other person liable therefor.

While that part of the statute providing for collection by the distributor from the consumer the tax advanced by him is not as clear as it might be, there can be no doubt of the intention of the general assembly, as Section 5093-a8 provided for a notice to be posted by the retailer to inform the purchasing public that such retailer is paying or has paid a tax of three cents on each gallon of gasoline to be sold. Central Transfer Co. v. Commercial Oil Co., 45 Fed. (2d) 400, 402.

Upon consideration of the entire act, the intention of the legislature is readily apparent; first, a levy is made upon all motor vehicle fuel used or consumed in the state; second, the person or persons using the fuel within the state are made liable for the payment of the fees; third, a refund is granted to users of such motor vehicle fuel other than users on the public highways; and, fourth, the distributor, for the privilege of selling and dispensing of gasoline within the state of Iowa, is to be a toll collector and administer the collection of the tax, making his reports as required by Section 5093-a5, and in either paying or advancing the tax on the 20th day of the month following that on which the gasoline was imported and unloaded by him.

Questions of the necessity of administration are practical matters and have to be indulged in by the state. Someone must pay the tax before it is ultimately used or consumed, as even the ultimate consumer has to advance the fee before he uses or consumes the gasoline. A distributor of gasoline has no inherent rights to sell and dispense gasoline in the state of Iowa, and on account of the nature of the product that he handles, the state has a right to require of him in consideration of his right to dispense gasoline within the state the administrative acts as provided by the statutes. Laws providing for the licensing of a dealer or distributor and requiring that he advance the tax afterwards to be collected from the consumer and wherein are contained provisions for users of gasoline for purposes other than propelling motor vehicles upon the highways to obtain a refund of the tax paid to the dealer or distributor have been held constitutional by a great number of the state and federal courts. Foster & Creighton v. Graham, 285 S. W. 750, 47 L. R. A. 973 (Tenn.); Miller v. People, 76 Colo. 157; Gafill v. Bracken, 195 Ind. 551; Stand-

[fol. 99] ard Oil Co. v. Brodie, 153 Ark. 114; Standard Oil

Co. v. Jones, 48 S. D. 482; State v. City of Sioux Falls, — S. D. —, 244 N. W. 365; State v. Hart, 125 Wash. 520; People v. Deep Rock Oil Corpn., 343 Ill. 390; Pierce Oil Corpn. v. Hopkins, 282 Fed. 253; Schevenell v. Blackford, 35 Fed. (2d) 421. Many of these cases directly and properly determine questions here raised.

One-Cent Tax Statute

As the provisions and conditions of the two-cent statute relating to the levy, collection or payment of the license fee are to apply and be added to its provisions, its interpretation is practically the same as the two-cent tax statutes. The two-cent tax is levied on all gasoline used or consumed in the state, and the one-cent tax on all gasoline imported and used in the state. As the terms used and consumed have practically the same meaning, the only difference is that in the one-cent statute gasoline to be taxed in Iowa is to be both imported and used.

It is true, as pointed out by complainant, that the one-cent statute does not expressly refer to the refunds, but, on account of the relationship between these two statutes and the cross reference therein to the provisions and conditions of the two-cent statute, it is apparent that it was the intention of he legislature to make the ultimate consumer or user of the gasoline on the highways of the state primarily liable for the payment of the tax. Since the enactment of these statutes in 1927 all distributors of motor vehicle fuel in Iowa have so interpreted it and the users of gasoline have at all times enjoyed the refund provisions of the act with reference to both the two-cent and the one-cent statute.

But if refunds are allowed to persons other than users of gasoline on the highways of the state, it does not affect this claimant. It is a distributor, not a user of gasoline. Its duties are to pay to the state of Iowa all the license fees on gasoline or motor vehicles fuel which it collects from users of such motor vehicle fuel.

There is no gasoline distilled in Iowa other than at the plant at Carter Lake, Iowa, hence, there is no discrimination on this account as against the complainant in this case. The legislature may have had in mind that all gasoline used within the state of Iowa must necessarily be imported.

[fol. 100] Interstate Commerce Provisions of the Statutes

Complainant seeks to take advantage of the statement in Section 5093-a5 that "neither this act nor any of its provisions shall apply to foreign or interstate commerce." The argument is that this provision entirely emasculates the provisions of the act as they expressly refer to imports of gasoline by the distributor. These provisions, however, wherein the importations are referred to have to do with the administration of the collection of the tax and not to its levy, collection or payment. A literal construction of a statute leading to absurd results should be avoided if possible. 287 U. S. 33, 45. And this provision, when properly construed, tends more to disrupt complainant's theory of the statute than to support it. When it is read in connection with the rest of the act, is clearly apparent that it was the intention of the general assembly to disclaim any intention of interference with foreign or interstate commerce and that the provisions of the act should be so construed.

Constitutionality

A main contention of complainant is that the one-cent statute levying a tax on motor vehicle fuel imported and used in this state; Section 5093-a5 providing for reports on imported motor vehicle fuel; and the manner and method of their enforcement by the state officers, violate the commerce clause of the Constitution, in that it places a burden upon its interstate commerce. The above interpretation of the statutes answers many of its contensions. The word "imported" in the one-cent statute is a word of limitation and it would be a violent interpretation to say it meant a levy on motor vehicle fuel while being both imported and used.

The legislature very carefully refrained from placing a tax on the distributor and a differenf situation is presented than the statutes declared unconstitutional on this account by the Supreme Court of Illinois in the case of Chicago Motor Club v. Kinney, 160 N. E. 163. The requirement of the reports as to motor vehicle fuel imported is administrative only and has repeatedly been held not a burden on interstate commerce. 256 U. S. 642.

The state officials as shown by the reports base their findings as to the amount of license fees due, on the gasoline as

unloaded, giving credit or not endeavoring to hold the distributor accountable for gasoline reshipped out of the state after unloading.

It has been repeatedly held that a state may put an excise tax on a commodity of trade or commerce when such commodity has finally come to rest in the state. Superior Oil Co. v. Mississippi, 280 U. S. 390; Nashville, etc. R. R. v. Wallace, — U. S. — decided Feb. 16, 1933.

[fol. 101] Iowa Constitution

But it is claimed that the one cent statute is of no force and effect because it was never enacted; because the title to the act creating the law did not in any manner refer thereto and is defective; and because the act expresses no object to which the tax is to be applied, but refers to another law to fix such tax or object.

The constitutional provisions are as follows:

Article III, Section 29, of the Constitution of Iowa:

"Acts—one subject—expressed in title. Section 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall be expressed in the title."

Article VII, Section 7, of the Constitution of Iowa:

"Tax imposed distinctly stated. Sec. 7. Every law which imposes, continues, or revises a tax, shall distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

The three challenges may be considered together. It is perfectly apparent that the object of the tax is distinctly stated and that neither the tax or the object therefor is enacted by reference to any other law or statute.

The reference to the two cent statute was to its provisions and conditions, as to the levy, collection and payment of the new tax. It does not make such reference *to* the purpose of fixing such tax, nor for the purpose of fixing the

object for which the tax was levied. They are both contained in the act itself.

The right to thus cross reference to provisions of other statutes or to the federal statute seems to be quite uniformly recognized. Ballard Hassett Co. v. Local Board of Review (Iowa), 246 N. W. 277, 278.

One theory of complainant is that section 5093 a5 imposes a direct tax on the distributor, and hence there is a reference to another statute to fix the tax against him. But there is no tax levied on him; the liability once placed on the distributor was by section 4 of Chapter 248 of the Laws of the 42d General Assembly expressly repealed.

The other objections are that the tax was not specifically referred to in the subject of the act.

[fol. 102] The title to Chapter 103, Acts of the 42d General Assembly is as follows:

"An Act to amend the law as it appears in senate file number 104 as enacted by the 42d General Assembly of the State of Iowa, relating to the improvement of the primary road system and the appointment of members of the highway commission and an auditor therefor."

The title to Chapter 101 of the 42d General Assembly, senate file 104, is as follows:

"An Act to amend, revise, and codify sections 4622 * * * of the code, 1924, relative to the primary road system and the primary road fund, to transfer the control of the primary roads to the state, to empower the state to construct and maintain the primary road system, to do away with special assessments for paving primary roads, to refund for such assessments heretofore levied, to do away with the area basis for allotting primary road funds among the counties, to provide for an increase in the membership of the state highway commission; to further prescribe their rights and duties, and limiting their powers with respect to creating an obligation against the state."

Chapter 103 of the 42d General Assembly refers to Chapter 101 thereof, which it amends, which in turn amends, revises and codifies certain sections of the Code of 1924 which were enacted by Chapter 237, Acts of the 38th General Assembly. The title to Chapter 237, Acts of the 38th General Assembly, and sections 1 and 4 thereof, are as follows:

"An Act to co ordinate the work of the state of Iowa and of the government of the United States relative to road improvements, to provide and define a system of primary and secondary roads in each county and to provide for the extension of such primary system, to provide for the improvement and maintenance of such roads, and to prescribe the procedure therefor, to extend certain options to each county in the improvement of its roads, to provide the funds to pay the cost of such improvements and to regulate the division, accounting and disbursements of such funds, to authorize, in certain cases, the levy of limited special assessments upon real estate which abuts upon or is adjacent to such road improvements, in order to defray a part of the cost thereof and to regulate and prescribe the procedure in consummating such assessments and the collection and application thereof. * * *"

"Section 1. Highways improvements system funds federal aid etc. It is the intent of this act to divide the highways of the state and of each county into a primary and secondary system, to provide for the substantial and durable improvement of such primary roads of each county, to pay for said improvements on such primary roads of each county from federal aid funds, motor vehicle registration fees, and from the proceeds of assessments on benefited real property. * * *"

"Section 4. Primary road fund how created apportionment to counties. There is hereby created a fund which shall be known as the primary road fund, which shall embrace the federal county cooperative road fund as created by Chapter 249 of the laws of the 37th General Assembly, all additional and future federal aid road funds, and all other funds derived from year to year by the state under acts regulatory of motor vehicles. * * *"

[fol. 103] It can be seen therefore that the authority for the one cent license fee was found in the title to the original law; and the Supreme Court of Iowa has decided that in questions as to the sufficiency of the title, the courts look to the title of the original act in order to ascertain whether the amendatory act comes within the title of the original act. Cook v. Marshall County, 119 Iowa 384, 401; Fevold v. Board of Supervisors, 202 Iowa 1019, 1033; and see

McQuire v. Chicago, Burlington & Q. R. R., 131 Iowa 341, 219 U. S. 549.

We are satisfied that when we consider the prior acts, of which the act in question is amendatory, and which it is fair to assume was in the minds of the legislators at the time the amendment challenged was before them for action, the general purposes of the act were sufficiently contained in the title to warrant the inclusion therein of a tax on gasoline to assist in the maintenance of the public highways of the state.

Duress

The bill as prepared strongly indicates that the complainant was laboring under considerable feeling when it was prepared and filed. It was the thought of the pleader that the actions of the state in starting civil actions to collect taxes which it claimed to be due, in starting the criminal proceedings and in cancelling the complainant's license as a distributor, all indicated a feeling of malice towards complainant that entitled it to be protected by a court of equity through injunction. The facts above set forth would indicate however, that the state was warranted in the proceedings taken. There was at least a justifiable reason and cause shown. The criminal cases have been entirely disposed of. Complainant herein has all the rights that it would have in this action to plead in the state case and raise questions as to the constitutionality of the state or federal constitutions. The treasurer of state also says that he does not intend any further proceedings in courts of law until his rights are determined by the actions now pending. No necessity therefore appears why this court should issue an injunction restraining the present treasurer of state from further proceedings either in law actions or criminal proceedings and we are unable to say that the [fol. 104] state officials were not entirely within their rights in doing what they did do or that the situation as presented warrants equitable relief in this court.

Complainant says however that under these statutes it cannot refuse to pay the tax and thus raise the questions in a law action when sued whether distilling gasoline at Carter Lake, transporting it through Nebraska to Iowa is importing gasoline, or whether importing nap-tha and compounding it with other ingredients to produce gasoline

is an importation of gasoline, as such act on its part would bring penalties and a revoking of its license. Such a situation may require equitable relief. Ex parte Young, 209 U. S. 123.

But no such situation here exists. No gasoline is being distilled at Carter Lake and no evidence was introduced that would warrant a finding that the compounding of gasoline within the state does not require the importation of motor vehicle fuel other than that upon which the tax is imposed and collected by complainant. Its distributor's license has already been revoked. If, as claimed, the action of the treasurer was arbitrary and without reasonable cause, the complainant may by proper proceedings have his action rescinded by the courts. This claim appears to have been raised as an excuse for failure to report gasoline imported rather than a basic ground upon which an outraged supplicant seeks relief from a court of equity.

Revocation of the License

Another claim is that the statute imposing the tax requiring payment, etc., under penalty of revoking the license to do business and without providing for a hearing thereon constitutes the taking of property without due process of law. The argument consists of a citation and quoting excerpts therefrom in the case of Hooper v. Tax Commission, 284 U. S. 206. That case holds that an attempt by a state to measure a tax on one person's property or income by reference to the property or income of another is contrary to due process of law. The holding is not analogous to the claimed invalidity of the revocation license statute. Section 5093-a5 provides:

[fol. 105] "If any such distributor shall fail to pay such license fees and penalties within ten days after the date due, the attorney general shall bring appropriate action for *for* the recovery of such license fees and penalties; and in addition whenever any licensed distributor fails to render the prescribed reports, renders a false report, to the treasurer or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor."

There is no question but that this is harsh penalty, but if the wisdom of the legislature has prescribed the grounds on

which the revocation may be had as a protection for the collection of money due the state, the courts can not interfere.

The thought of the complainant evidently is that the distributor's license was cancelled before it could have an opportunity of being heard in court as to whether or not the claimed license fees were legally due from it. It is quite generally held that where the nature of a business may be controlled by a state under the exercise of its police power and a license to conduct such business is properly required and issued, that for cause and without notice of hearing such a license may be revoked by the executive officer. Rehmann v. City of Des Moines, 200 Iowa 286, 204 N. W. 267; Doyle v. Continental Ins. Co., 94 U. S. 535; 37 C. J. 247; 17 R. C. L. page 554.

Here the treasurer may cancel a distributor's license where the distributor fails to render the prescribed reports, renders a false report, or fails to pay the license fee due. If, as contended for by complainant in this case, it did not fail to file reports, or submit a false report, or there was no license fees due on the product shipped from Carter Lake, Iowa, to Council Bluffs, Iowa, then if has recourse to the courts to set aside the action of the treasurer in a proper action as being arbitrary and unreasonable.

No relief of that nature is asked in this case.

Discrimination

It is claimed that the one cent statute is discriminatory because if gasoline were distilled or manufactured in Iowa it would escape the one cent statute as not being both im- [fol. 106] ported and used. The short answer is that there is no such gasoline distilled or manufactured in Iowa except that which was distilled or manufactured prior to April 1, 1932, by the complainant company itself.

The party who invokes the power to declare a statute unconstitutional must be able to show not only that the statute is invalid but that he has sustained or is in immediate danger of sustaining some direct injury as a result of the enforcement and not that he suffers in some indefinite way in common with people generally. Massachusetts v. Mellon, 262 U. S. 488; Williams v. Riley, 280 U. S. 79.

If is true there are questions raised as to whether nap-tha imported into Iowa and blended might escape the penalty of the tax on the ground that it was not motor vehicle fuel im-

ported into Iowa, but the evidence does not disclose this to be the fact. The statute itself does not discriminate but treats all alike. The officers are not discriminating as they are insisting that the tax should be paid on nap tha imported and blended as imported gasoline. Whether or not the one cent tax can be collected on motor vehicle fuel blended in the state of Iowa is a legal question which can and is being determined in law actions and does not now require equitable interference.

Equitable Relief

It is apparent that the distributors of gasoline in Iowa have uniformly since the statutes were first enacted in 1927 collected the tax therein imposed from the ultimate consumer either before or after the tax was advanced by them to the state treasurer. It is also apparent that the complainant in this case has not only been doing this but it has collected under the statutes which it is now asking us to hold unconstitutional these very taxes which it is refusing to pay to the state of Iowa. It is also apparent that there is little criticism that can be advanced as against the two cent statute or its enforcement by the officers of Iowa. No offer or tender to pay back these taxes collected by the complainant or to pay the two cent tax and to refuse to pay the one cent tax is made in this suit, and to grant the relief asked would permit the complainant to retain these amounts collected. This situation invokes the rule that he who seeks equity must do equity. A court of equity should hesitate [fol. 106a] to permit a party to have a statute declared unconstitutional under which it has obtained and is retaining benefits. 10 R. C. L. (Estoppel), Sec. 140.

In United States District Court

Findings of Fact, Conclusions of Law and Order—Filed March 29, 1933

In accordance with the above opinion and the requirement of new Equity Rule 70½, findings of fact and conclusions of law are made and the same shall be entered of record by the Clerk, as well as this opinion and order.

Findings of Fact

1st. The facts stipulated by the parties and introduced in this case from 1 to 26 inclusive, are adopted as fact findings by this court and shall be entered as such by the Clerk in keeping with Rule 70[illegible].

[fol. 106b] These twenty-six Stipulations of Facts are as follows:

I. It is stipulated and agreed that the Mona Motor Oil Company is a corporation organized and existing under and by virtue of the laws of the State of Arizona and is a resident and citizen of the State of Arizona and is doing business in Iowa as a foreign corporation. That the Defendant, Ray E. Johnson, was at the time of the commencement of this action the duly elected, qualified and acting Treasurer of the State of Iowa and is a resident and citizen of said State having had his office at Des Moines, Iowa. That the Defendant, John Fletcher, at the time of the commencement of this action was the duly elected, qualified, and acting Attorney General of the State of Iowa and is a resident and citizen of said State and had his office at Des Moines, Iowa. That the Defendant J. J. Hess, was at the time of the commencement of this action, the duly appointed, qualified and acting Assistant Attorney General of the State of Iowa in charge of the actions started by the State of Iowa against the Mona Motor Oil Company for the enforcement of the statutes hereinafter referred to and the collection of the license fees provided thereby and that J. J. Hess is a resident of the State of Iowa and of Pottawattamie County and the City of Council Bluffs. That the Defendant, Percy A. Lainson, was at the time of the commencement of this action the duly elected, qualified and acting Sheriff of Pottawattamie County, Iowa, and his residence is at Council Bluffs in Pottawattamie County, Iowa.

II. It is further stipulated and agreed that Leo. J. Wegman was duly elected Treasurer of the State of Iowa at the November, 1932, election for the term commencing on the second secular day of January, 1933, and that said Leo. J. Wegman has been added as a party defendant and the allegations of the petition made to apply to him as said Treasurer.

III. That Edward L. O'Connor was duly elected Attorney General of Iowa at the November, 1932, election, his

term of office to commence on the second secular day in January, 1933, and that said Edward L. O'Connor has now [fol. 106c] been added as a party defendant and the allegations of the petition made to apply to him.

IV. That the Mona Motor Oil Company has power to sue and to be sued and has its principal place of business in Council Bluffs, Pottawattamie County, Iowa, and is authorized to do and does business in the State of Iowa and in other states as a foreign corporation and is engaged in Iowa in the business of buying and selling gasoline, motor vehicle fuel, and other petroleum products and has in the past and up to April 1st, 1932, been engaged in the business of refining gasoline at Carter Lake, Iowa, and has since that time been engaged in the business of blending and compounding gasoline at said place. That the Mona Motor Oil Company is the owner of a gasoline refining, blending and compounding plant in the Town of Carter Lake, Pottawattamie County, Iowa, at which place it had prior to April 1st, 1932, refined, blended and compounded gasoline, motor vehicle fuel and other petroleum products and since April 1st, 1932, has blended and compounded gasoline at said plant. That the Mona Motor Oil Company maintains at said place bulk and storage tanks for the storage of gasoline refined, blended and compounded and purchased by said corporation. That Carter Lake, Iowa, is on the West side of the main channel of the Missouri River and in moving said gasoline from Carter Lake, Iowa, it is necessary that said gasoline pass through the State of Nebraska in arriving at any designated point in Iowa. That the Mona Motor Oil Company is engaged in Council Bluffs, Iowa, in selling and delivering to customers and dealers in the State of Iowa and in other states, gasoline, motor vehicle fuel and other petroleum products. That the Plaintiff imports into the State of Iowa gasoline and motor vehicle fuel and prior to April, 1932, refined and compounded said gasoline in the State of Iowa and since April, 1932, has compounded said gasoline in the State of Iowa. That the Mona Motor Oil Company maintains in Iowa a number of bulk and serv- [fol. 106d] ice stations for the storage of gasoline in which stations are stored gasoline manufactured in Iowa and gasoline imported into Iowa, and prior to April first and since that time has stored gasoline imported into Iowa and gasoline compounded and blended in the refineries in Iowa,

That all of the gasoline refined, compounded or blended that was moved to other points in Iowa from Carter Lake, Iowa, passed through the State of Nebraska to bulk and storage stations in the State of Iowa. That from such bulk and storage stations gasoline is distributed to various dealers in Iowa, customers of the Plaintiff and to various service stations operated in Iowa by the Plaintiff. That the Plaintiff maintains and operates, owns or is the lessee of numerous service stations located at various points in the State of Iowa and the Mona Motor Oil Company sells to customers in Iowa some of its gasoline, motor vehicle fuel and other petroleum products manufactured in Iowa as aforesaid and imported into Iowa.

V. That the Mona Motor Oil Company operates Thirty (30) service stations in the State of Iowa and leases Twenty-Nine (29) service stations which are operated by customers of the Mona Motor Oil Company in the State of Iowa.

VI. That the Plaintiff as the owner of bulk and service stations pays a large amount of taxes upon said property to the State of Iowa and pays in rentals upon service stations leased by the Mona Motor Oil Company a sum in excess of $5,000.00 per month.

VII. That out of, from or through the bulk stations and service stations plants in Iowa the Plaintiff sells many thousands of gallons of gasoline per month together with a large amount of oil, grease, tires and kindred products in the sum of $12,500 per month, and that said business is conducted in various communities in the State of Iowa.

VIII. That as a part of the business conducted by the Mona Motor Oil Company is the sale of gasoline at Council [fol. 106e] Bluffs, Iowa, to many dealers in the States of Nebraska, Minnesota, South Dakota and other surrounding States, said sales and deliveries of gasoline being from bulk stations in Iowa. That many of said sales so made in Iowa are for deliveries to be made to customers in the City of Omaha, Nebraska, and deliveries of gasoline to the City of Omaha are made from bulk stations and refineries at Carter Lake, Iowa. All of which is shown by the reports on file with the Treasurer of the State of Iowa, and it is stipulated and agreed that said reports or any of them may

be offered and introduced in evidence without objection and identification thereof is waived.

IX. That the Mona Motor Oil Company makes sales and deliveries of gasoline from its gasoline and storage in the State of Iowa and transports said gasoline to other distributors and dealers in Iowa.

X. That the Mona Motor Oil Company in connection with the distribution of motor vehicle fuel and for advertising purposes operates a radio station at Council Bluffs known as KOIL over which it broadcasts advertising of other customers as well as advertising motor vehicle fuel of the Mona Motor Oil Company.

XI. That as a part of the business conducted in Iowa by said Mona Motor Oil Company, said Company imports into Iowa from other States in tank cars and other containers and by tank trucks said gasoline and delivers the same to certain other distributors and dealers in the State of Iowa. That said importation of gasoline is a part of the general business regularly conducted by the Mona Motor Oil Company in the State of Iowa. That the sales are made in Iowa and is what is commonly termed a jobbing business of gasoline whereby the Mona Motor Oil Company supplies other distributors and dealers with gasoline in wholesale quantities shipped from points outside of the State of Iowa and that such business is now being conducted by the Mona Motor Oil Company in the State of Iowa and amounts to many thousand dollars per month.

[fol. 106f] XII. That on the date shown by the application the Plaintiff made a written application to the Treasurer for a distributors certificate and license as provided for in Section 5093-a4 of the Code of 1927. And it is stipulated and agreed that all the records pertaining to said application in the office of the State Treasurer may be offered and received in evidence without further identification and copies thereof may be substituted if desired.

XIII. That pursuant to said application the Defendant, Ray E. Johnson, Treasurer of the State of Iowa, issued to the Mona Motor Oil Company a distributors certificate and license and it is agreed that a copy of such certificate and license may be offered in evidence waiving identification and the objection that the same is not the best evidence.

XIV. It is stipulated and agreed that the statutes and session laws of the State of Iowa attached hereto are true and correct copies of the laws and statutes of the State of Iowa and may be received in evidence without further identification and the objection as to their being the best evidence is waived.

XV. It is stipulated and agreed that all of the records and informations in the Municipal Court and the indictments in the District Court, together with all records in the office of the Clerk of the District Court with reference to pleas thereon and dismissal thereof may be offered in evidence without objection and the attached copies be substituted for the original of said records.

XVI. It is stipulated and agreed that the copies of the original notice, the petition and motion to make petition more definite and certain, and motion to remove to the Federal Court, and motion to remand, the writ of attachment, the dictation of the Sheriff and the return on the writ of attachment, be received in evidence and the objection that the same are not the best evidence is hereby waived.

[fol. 106g] XVII. That on August 15th, 1932, Ray E. Johnson, Treasurer, mailed to the Mona Motor Oil Company a letter which was received August 16th, 1932, and that the copy of said letter hereto attached is a correct copy thereof and may be received in evidence, waiving the objection that the same is not the best evidence.

XVIII. It is further stipulated and agreed that for the months of June, July and August, 1932, the Mona Motor Oil Company filed with the State Treasurer its report, a protest, a copy of which is attached hereto and it is stipulated that said copies of the report and protest may be treated as in lieu of the originals.

XIX. It is stipulated and agreed that from and after about the month of May, 1925, until the month of June, 1932, the plaintiff or complainant on about the 20th day of each and every month filed with the Treasurer of State a gasoline and motor vehicle fuel report and forwarded to the State Treasurer of the State of Iowa the license fees provided by the laws of the State of Iowa as shown by said report and that during said period of time the complainant at no time filed with the State Treasurer a written

objection to the payment of said tax, or in any manner objected to the payment thereof for any reason whatsoever. Copies of reports to be made a part of the record.

XX. It is further stipulated and agreed that prior to the month of June, 1932, no suits were begun in any of the courts of the State of Iowa or of the United States within the State of Iowa, wherein it was claimed that the statutes of the state of Iowa levying license fees upon motor vehicle fuel were unconstitutional or void.

XXI. It is further stipulated and agreed that in most of the counties of the State of Iowa during the years 1928, 1929, 1930, and 1931, elections were held at which the voters of said several counties voted upon the question of the issuance of primary road improvement bonds and that there was voted in the several counties of the State of Iowa more than $100,000,000.00 of such primary road improvement bonds and in no case did a county vote primary road im- [fol. 106h] provement bonds in excess of the amount which the highway commission of the state of Iowa estimated would be paid off out of said county's allotment of the primary road fund, and that such matters were known to this complainant.

XXII. It is further stipulated and agreed that prior to the commencement of the complainant's action herein, a suit was commenced in the name of the State of Iowa and R. E. Johnson, Treasurer of the State of Iowa, in the District Court of Pottawattamie County, Iowa, for the collection of certain alleged delinquent license fees and that said suit was pending at the time of the commencement of plaintiff's action, a copy of the petition in said suit being attached as an exhibit to the complainant's petition.

XXIII. It is further stipulated and agreed that that portion of the motor vehicle fuel produced, refined, manufactured or compounded by complainant within the State of Iowa during the time covered by complainant's petition and shipped through Nebraska into Iowa was mingled in Iowa with motor vehicle fuel shipped into Iowa from outside of the State during said period and all such gasoline or motor vehicle fuel, whether imported or compounded, was sold at the same price when sold in Iowa.

That wherever and at any and all places where the Mona Motor Oil Company sold gasoline as a dealer the Mona Mo-

tor Oil Company displayed the placard provided by Section 5093-a3 in the form therein prescribed.

XXIV. It is further stipulated that none of the materials which are used to produce, refine, manufacture or compound motor vehicle fuels within the State of Iowa originate within the State of Iowa but that all are shipped into the State of Iowa from other states.

[fol. 106i] XXV. It is further stipulated and agreed that, at the time of the offer of the matters and exhibits covered by the foregoing stipulation, either party may make the objection that the same is immaterial and irrelevant, but that all other objections thereto are waived.

XXVI. This stipulation shall not prejudice the right of either party to offer further evidence on matters not herein agreed upon.

(Sgd.) Geo. S. Wright, Paul E. Roadifer, Addison G. Kistle, Attorneys for Complainant. Edward L. O'Connor, C. E. Hamilton, L. W. Powers, Attorneys for Defendant.

[fol. 106j] Chapter 251-A1

Motor Vehicle Fuel Tax

Referred to in §4755-b38

5093-a1. Amount of fee. A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided (C27, §5093-a1; 44GA, ch. 108.)

5093-a2. Definition of terms. The term "distributor" as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures, or compounds within the state any motor vehicle fuel to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor

vehicle may transport, for his own use, in the ordinary motor vehicle fuel tank attached to and forming a part of such motor vehicle, not more than twenty gallons of motor vehicle fuel without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa.

"Motor vehicle fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose, except the products commonly known as kerosene and/or distillate, or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel. (C27, §5093-a2; 44GA, ch. 108.)

5093-a3. Sale price placard—misdemeanor—penalty. Any person who sells or offers for sale at retail motor vehicle fuel in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the total sale price per gallon including license fee, of all grades of motor vehicle fuel sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days. (C27, §5093-a3; 44GA, ch. 108.)

[fol. 106k] 5-93-a4. Certificate—license. Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of motor vehicle fuel in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by

him, which shall contain the name under which such distributor is transacting business within the state of Iowa, and the principal place of business of such distributor. If such distributor is a firm or copartnership, the certificate shall also contain the names and addresses of the several persons constituting same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined shall within sixty days after this chapter becomes effective, and any person or persons desiring to engage in such business shall before beginning the manufacture or sale of motor vehicle fuel within the state, procure a license from the treasurer of state permitting said distributor to transact said business with the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section. (C27, §5093-a4; 44GA, ch. 108).

5093-c2. Distributor—requirements. Before any distributor shall engage in business as defined in this chapter, he shall first file with the treasurer of state a statement showing financial responsibility satisfactory to said department, or a corporate surety bond payable to the state of Iowa in the penal sum of one thousand dollars, conditioned that said distributor will pay to the state of Iowa any and all fees required by the law. Said bond, or financial statement, shall be approved by the treasurer of state. No license shall be issued unless the bond, or financial statement, required herein is attached to and delivered to the treasurer of state with the application for said license. If any distributor now engaged in business fails to file the bond or financial statement, required by this section within thirty days after the effective date thereof, his license shall be revoked. (43GA, ch. 29, §1.)

5093-a5. Reports—remittances—rebates—penalties. On or before the twentieth day of each calendar month each distributor of motor vehicle fuel shall file in the office of the treasurer of state, at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of motor vehicle fuel and/or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which motor vehicle fuel is imported into the state of Iowa. If no importations are made for the preceding calender month, a report shall be made to that effect on the forms prescribed herein, and in the same man-
[fol. 106l] ner. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any motor vehicle fuel in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employe thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state, the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the motor vehicle fuel fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 5093-a8.

If any distributor of motor vehicle fuel shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within ten days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees

and penalty; and in addition whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42GA, ch. 248) nor any of its provisions shall apply to foreign or interstate commerce. (C'27, §5093-a5; 43GA, ch. 29, § 2; 44GA, ch. 108.)

5093-b1. Tank car reports—inspection of books. Every railroad company, or other person, firm or corporation transporting motor vehicle fuel in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of motor vehicle fuel received at the station or place during the preceding calendar month, the name of consignor, the name of the consignee, the number of gallons of motor vehicle fuel and/or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of motor vehicle fuel as herein defined shall be subject to inspection during ordinary business hours by the treasurer of his representatives. (C'27, §5093-b1; 44GA, ch. 108.)

[fol. 106m] 5093-a6. Books open to inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of motor vehicle fuel shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation, shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall

be liable to a fine not exceeding one thousand dollars. (C'27, § 5093 a6; 44 GA, ch. 108.)

5093-a7. Misdemeanor—penalty. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine, the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of motor vehicle fuel, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093-a4, 5093-a5, and 5093-b1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor. (C'27, § 5093-a7; 44GA, ch. 108.)

5093-a8. Reimbursement—procedure—false statement. Any person who shall buy or use any motor vehicle fuel for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any motor vehicle fuel for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase which statement shall set forth the total amount of motor vehicle fuel so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state and the treasurer of state shall, upon the presentation of such invoice, cause to be

repaid from the funds collected hereunder, the amount of such license fee paid by such consumer on motor vehicle fuel used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose within ninety days after the date on which such motor vehicle fuel shall have been purchased as shown by the invoice. Any person, firm, or corporation who shall make any false statement in connection with an application for the refund of any money or license fee as herein provided or who shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars. (C'27, § 5093-a8; 44GA, chs. 108, 124.)

[fol. 106a] 5093-a9. Distribution of proceeds. License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. Two-thirds to the secondary road construction fund of the several counties of the state. The treasurer shall apportion said two-thirds portion among the counties of the state in the ratio that the area of each county bears to the total area of the state, and shall, on the first day of each month, remit to the treasurer of each county the amount apportioned to the secondary road construction fund of the county. (C'27, § 5093-a9; 43GA, ch. 20, §75.)

5093-a10. Refunds quarterly. The refunds provided for in section 5093-a8, shall be made, quarterly by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state. (C'27, § 5093-a10.)

5093-a11. Employees—appropriation. The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay

for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein, and to pay the cost of postage, equipment, supplies and printing used by the department. (C'27, § 5093-a11; 44GA, ch. 125.)

5093-a12. Act separable. If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter. (C'27, § 5093-a12.)

[fol. 106o] The following is the title to Chapter 237, of the Acts of the 38th G. A. which became Chapter 241 and Sections 4687 to 4755 inclusive, of the Code of 1924 and subsequent Codes of Iowa:

"An act to co-ordinate the work of the state of Iowa and of the government of the United States relative to road improvements, to provide and to define a system of primary and secondary roads in each county and to provide for the extension of such primary system, to provide for the improvement and maintenance of such roads and to prescribe the procedure therefore to extend certain options to each county in the improvement of its roads, to provide the funds to pay the cost of such improvements and to regulate the division, accounting and disbursement of such funds, to authorize, in certain cases, the levy of limited special assessments upon real estate which abuts upon or is adjacent to such road improvements, in order to defray a part of the cost thereof and to regulate and prescribe the procedure in consummating such assessments and the collection and application thereof, to authorize and regulate the anticipation by each county of the funds (including special assessments) provided by this act for road improvements, to authorize the submission to the voters of each county of the question of issuing the bonds of the county in order to secure immediate funds to carry on such improvements, and of levying an annual tax on all the property of the county to pay the annual interest on said bonds and to pay an deficiency in the principal of such bonds which cannot be met by other funds provided by this act, to authorize the submission to the voters of the county of the question of validating specified contracts for the improvement of highways and the question [fol. 106p] of issuing the bonds of the county in order to carry out such contracts, and of levying an annual tax to

pay the annual interest on such bonds and to pay any deficiency in the principal of such bonds which cannot be met by other funds provided by this act, to provide the procedure for submitting all such questions to voters and for the determination of the result of such submission, to provide the procedure for the levy of taxes and for the form, conditions, issuance, application, disbursement and payment of authorized bonds and the interest thereon, to limit the amount of bonds which may be issued under any vote of authorization, to empower township trustees to levy an additional tax of two mills for township roads, to provide for the purchase, lease, receipt and distribution of equipment in aid of the improvements provided by this act and to authorize the payment of the cost of such equipment, to prohibit and punish violations of this act, to repeal section one thousand five hundred seventy-one m thirty-two (1571-m32), supplemental supplement to the code 1915, and to enact a substitute therefor, to amend paragraph five (5) of section one thousand three hundred three (1303) supplemental supplement to the code, 1915, to repeal sections fifteen hundred twenty-seven-f (1527-f) to section fifteen hundred twenty-seven-r (1527-r) supplement to the code, 1913, and all existing acts and parts of acts in conflict with this act, to provide for the printing and distribution of this act, and to provide the time when the same shall take effect."

[fol. 106q] The title to Senate File 104 of the 42nd General Assembly which became Chapter 101 of the Acts of the 42nd General Assembly and the first five sections of said act are as follows:

"Chapter 101, Highways. S. F. 104

"An act to amend, revise, and codify sections forty-six hundred twenty-two (4622), forty-six hundred twenty-three (4623), forty six hundred eighty-seven (4687) to forty seven hundred six (4706), inclusive, section forty-seven hundred eight (4708), section forty-seven hundred twelve (4712) section forty-seven hundred eighteen (4718), section forty-seven nineteen (4719), section forty-seven hundred twenty-seven (4727) to forty-seven hundred thirty-eight (4738), inclusive, section forty-seven hundred forty one (4741), section forty-seven hundred forty-three (4743), section forty seven hundred forty-four (4744), section forty-seven hundred fifty-five (4755), and section five thousand one (5001)

of the code, 1924, and chapter one hundred fourteen (114) of the laws of the forty-first general assembly, and to amend section five thousand two (5002) of the code, 1924, relative to the primary road system and the primary road fund, to transfer the control of the primary roads to the state, to empower the state to construct and maintain the primary road system, to do away with special assessments for paving primary roads, to refund for such assessments heretofore levied, to do away with the area basis for allotting primary road funds among the counties, to provide for an increase in the membership of the state highway commission, to further prescribe their rights and duties, and limiting their powers with respect to creating an obligation against [fol. 106r] the state.

"Be it enacted by the General Assembly of the State of Iowa:

"Sections forty-six hundred eighty seven (4687) to forty-seven hundred six (4706), inclusive, section forty-seven hundred eight (4708), section forty seven hundred twelve (4712), section forty-seven hundred eighteen (4718), section forty-seven hundred nineteen (4719), sections forty seven hundred twenty-seven (4727) to forty-seven hundred thirty-eight (4738), inclusive, section forty-seven hundred forty one (4741), section forty-seven hundred forty-three (4743), section forty-seven hundred forty-four (4744), section forty-seven hundred fifty-five (4755), and section five thousand one (5001) of the code, 1924, and chapter one hundred fourteen (114) of the laws of the forty-first general assembly, are hereby amended, revised, and codified to read as follows:

"Section 1. Federal aid. The state highway commission is empowered on behalf of the state to enter into any arrangement or contract with and required by the duly constituted federal authorities, in order to secure the full cooperation of the government of the United States, and the benefit of all present and future federal allottments in aid of highway construction, reconstruction, improvement or maintenance. The good faith of the state is hereby pledged to cause to be made available each year, sufficient funds to equal the total of any sums now or hereafter apportioned to the state for road purposes by the United States govern-

ment for such year, and to maintain the roads constructed with said funds.

"Sec. 2. Primary road system. The highways of the state are, for the purposes of this act, divided into two sys- [fol. 106s] tems, to-wit: the primary road system and the secondary road system. The primary road system shall embrace those main market roads (not including roads within cities and towns) which connect all county seat towns and cities and main market centers, and which have already been designated as primary roads under chapter 241, code of 1924; provided, that the said designation of roads shall be, with the consent of the federal authorities, subject to revision by the state highway commission. Any portion of said primary system so eliminated by any changes shall revert to and become a part of the system from which originally taken. The state highway commission may, for the purpose of affording access to cities, towns or state parks, or for the purpose of shortening the direct line of travel on important routes or to effect connections with interstate roads at the state line, add such road or roads to the primary road system, but no other increase shall be made in the mileage of the primary roads until the present primary road mileage has been completed as this act provides.

"Sec. 3. Primary road fund. There is hereby created a fund which shall be known as the primary road fund, which shall embrace all federal aid road funds, all funds derived from year to year by the state under acts regulatory of motor vehicles (except such portion of such motor vehicle fees as may by law be set aside for the state highway commission support fund, the motor vehicle department support fund, the refund account, and the reimbursement of county treasurers for collecting the motor fees) all gasoline tax funds devoted to the primary road system, and all other funds that may by law be appropriated for the use of the primary road fund.

[fol. 106t] "Sec. 4. Uses of primary road fund. Said primary road fund is hereby appropriated for and shall be used in the establishment, construction and maintenance of the primary road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination or improvement of railroad crossings, the acquiring of additional right of way, the payment of interest and re-

demption of any bonds issued in anticipation of said primary road fund, and all other expense incurred in the construction and maintenance of said primary road system, the costs of issuance and redemption of any bonds issued in anticipation of said primary road fund, and the refund of special assessments for paving.

"Sec. 5. Reimbursement of counties. Where additional right of way has been acquired, or where bridges have been built on the primary roads under the supervision of the highway commission, and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges out of the primary road fund within three (3) years from the taking effect of this act; provided, however, that any county that has received, or will receive during the year 1927, primary road money for use on secondary roads, the amount of such primary road money so received by such county and used on the secondary roads shall be deducted from the amount of refunds provided for herein. The refunds made to any county under this section shall at the option of the board of supervisors of said county be placed to the credit of the county road fund or the county bridge fund."

[fols. 106u & 106v] Chapter 103, acts of the 42nd General Assembly, including title, is as follows:

"Chapter 103, Highways—Audit—Gasoline Tax

"An act to amend the law as it appears in senate file number one hundred four (104) as enacted by the forty-second general assembly of the state of Iowa, relating to the improvement of the primary road system and the appointment of members of the highway commission and an auditor therefor.

"Be it enacted by the General Assembly of the State of Iowa:

"Section 1. That the law as it appears in section five (5) of senate file number one hundred four (104) as enacted by the forty-second general assembly of the state of Iowa, be and the same is hereby amended by striking from line six (6) thereof the word and figure "three (3)" five annual payments. The first payment to be made January 1, 1928 and the board of supervisors is authorized to issue certifi-

cates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six (6) years nor to bear an interest rate to exceed five (5) per cent.

"There is hereby levied on all gasoline imported and used within this state a license fee of one (1) cent per gallon, which shall be in addition to the license fee levied by chapter six (6), laws of the forty-first general assembly. All of the provisions and conditions of said chapter six (6), laws of the forty-first general assembly as amended by senate file No. 347, of the 42nd G. A., relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay [fol. 106w] the portion of the bridge and right-of-way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund.

"Sec. 2. That the law as it appears in section sixteen (16) of senate file number one hundred four (104) as enacted by the forty-second general assembly of the state of Iowa, be and the same is hereby repealed and the following enacted in lieu thereof:

'All claims shall be itemized upon voucher forms prepared for that purpose, sworn to by the claimants, certified to by the engineer in charge, and then forwarded to the state highway commission for audit and approval. Upon the approval, by the state highway commission, of vouchers which are payable from the primary road fund, such vouchers shall be forwarded to the auditor of state, who shall draw warrants therefor and said warrants shall be paid by the treasurer of state from the primary road fund.'

"Sec. 3. That the law as it appears in section twenty-one (21) of senate file number one hundred four (104) as enacted by the foryt-second general assembly of the state of Iowa be and the same is hereby repealed and the following enacted in lieu thereof:

'The state board of audit shall appoint the auditor of the state highway commission who shall give bond in the sum of fifty thousand dollars ($50,000) for the faithful performance of his duties. The premium on said bond shall

be paid by the state highway commission from its support fund. Said auditor shall check and audit all claims against the commission before such claims are approved by the commission, and shall keep all records and accounts relating to the expenditures of the commission. He shall, in the checking and auditing of claims against the commission, and keeping the records and accounts of the commission, be [fol. 106x] under the direction and supervision of the state board of audit, and act as an agent of said board. The state highway commission shall furnish said auditor with such help and assistants as may be necessary to properly perform the duties herein specified. The executive council may remove said auditor from office for failure to comply with the directions and instructions of the state board of audit in the performance of the duties herein required.

Approved April 19, A. D. 1927"

[fols. 106y & 106z] The last paragraph of Section 1 of Chapter 103, of the acts of the 42nd General Assembly became Section 4755-b38 of the Code of 1927, as follows:

"4755-b38. Gasoline—additional tax. There is hereby levied on all gasoline imported and used within this state a license fee of one cent per gallon, which shall be in addition to the license fee levied by chapter 251-A1. All of the provisions and conditions of said chapter 251-A1 relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of bridge and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund. (42 G. A. ch. 103.)"

[fol. 106aa] Chapter 108, Acts of 44th General Assembly, including title is as follows:

Chapter 108, Motor Vehicle Fuel

An Act to amend the law as it appears in chapter two hundred fifty-one A one (251-A1) and section forty-seven hundred fifty-five-b thirty-eight (4755-b38) of the code of Iowa 1927 by striking the word "gasoline" wherever it

appears and substituting the words "motor vehicle fuel", and defining the words "motor vehicle fuel", and to amend sections fifty hundred ninety-three-a five (5093-a5), and fifty hundred ninety-three-b one (5093-b1), code, 1927, so as to require reports to be made by carriers and distributors upon all substances to be used in the manufacture, mixture or blending of motor vehicle fuels.

Be it enacted by the General Assembly of the State of Iowa:

Section 1. That the law as it appears in chapter two hundred fifty-one-A one (251-A1) of the code of Iowa 1927 be and the same is hereby amended by striking out the word "gasoline" wherever it appears in said chapter, and substituting in lieu thereof the words "motor vehicle fuel".

Sec. 2. That the law as it appears in section forty-seven hundred fifty-five b thirty-eight (4755-b38) of the code of Iowa 1927 be and the same is hereby amended by striking out the word "gasoline" wherever it appears in said section, and substituting in lieu thereof the words "motor vehicle fuel".

Sec. 3. "Motor vehicle fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose, except the products commonly known as kerosene and/or distillate or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel.

Sec. 4. That the law as it appears in section fifty hundred ninety-three-a five (5093-a5) of the code, 1927, be and the same is hereby amended by striking the word "gasoline" in line seven (7) and inserting in lieu thereof the following: "motor vehicle fuel and/or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this act".

Sec. 5. That the law as it appears in section fifty hundred ninety-three-b one (5093-b1) of the code, 1927, be and the same is hereby amended by striking from line fifteen (15) thereof the word "and" and substituting

[fol. 106bb] in lieu thereof a comma (,); by striking the period (.) from line fifteen (15) thereof and substituting in lieu thereof a comma (,) and inserting immediately after the word "consignee" in said line fifteen (15) the following: "the number of gallons of motor vehicle fuel and or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this act."

Senate File No. 107. Approved April 25, 1931.

[fol. 106cc] The following is a copy of Chapter 3, of the Acts of the 42nd General Assembly, extra session:

Chapter 3, Refunds from Primary Road Fund. S. F. 6

An Act to amend, revise and codify section five (5) of chapter one hundred one (101), acts of the forty-second (42nd) general assembly, as amended by the first nine (9) lines of section one (1) of chapter one hundred three (103) acts of the forty-second (42nd) general assembly; and to amend section forty-seven hundred fifty-five-b thirty-eight (4755-b38) of the code of 1927, relating to refunds from the primary road fund to counties for rights-of-way and for bridges and culverts, or for either of said purposes.

Be it enacted by the General Assembly of the State of Iowa:

Section 1. Section five (5) of Chapter one hundred one (101) acts of the forty-second (42nd) general assembly, as amended by the first nine (9) lines of section one (1) of chapter one hundred three (103) acts of the forty-second (42nd) general assembly, is amended, revised, and codified to read as follows:

"Where additional right-of-way has been acquired or where bridges or culverts have been built on the primary roads under the supervision of the highway commission and paid for out of the county road or bridge funds since April nineteen (19), nineteen hundred nineteen (1919), said county shall be reimbursed for said right-of-way and said bridges or culverts out of the primary road fund in seven (7) annual payments. Provided however, in counties where the total refund does not exceed the sum of five thousand dollars ($5,000.00) the entire refund shall be made at the time of the first annual payment. The first payment shall

be made January first (1st), nineteen hundred twenty-eight (1928) and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six (6) years nor to bear an interest rate to exceed five per cent (5%). The refunds made to any county under this section shall at the option of the board of supervisors of said county be placed to the credit of the county road fund or of the county bridge fund.

Payments already made under the section for which this section is a substitute shall be readjusted by the highway commission to conform herewith. This act shall not be deemed to repeal lines ten (10) to twenty-three (23) inclusive, of section one (1) of chapter one hundred three (103) acts of the forty-second (42nd) general assembly."

Section 2. Section four thousand seven hundred fifty-five-b thirty-eight (4755-b38) of the code, 1927, is amended by inserting after the word, 'bridge' in the thirteenth line of said section the following: ', culvert,'.

[fol. 106dd] Sec. 3. This act being deemed of immediate importance shall be in effect from and after its publication in two (2) newspapers of this state as provided by law.

Approved March 14, A. D. 1928.

I hereby certify that the foregoing act was published in the Marshalltown Times-Republican March 19, 1928, and the Cherokee Chief March 22, 1928.

Ed. M. Smith, Secretary of State.

[fol. 107] 2nd. Payments for the months of June, July and August, 1932, in keeping with the reports filed by the Mona Motor Oil Company in those months were made under protest.

3rd. The officers of the state of Iowa in the enforcement of the motor vehicle fuel tax statutes under investigation required a report from each distributor doing business within the state and holding a license therefrom. The report form provided: in the heading, "Report of Motor Vehicle Fuel Imported into the State of Iowa;" and in separate columns for information as to "Date Unloaded;" "Station Where Unloaded;" "Initial (and) Number (of)

Tank Car;" "Other Container;" "Invoiced Gallonage;" and "Name of R. R. or other Carrier;"

These reports were required to be filed and the tax paid on the 20th day of the month following the months' business reported. In keeping with the report, the state treasurer allowed three per cent for waste and a deduction for gasoline sold and exported without the state, and a deduction for any gasoline reported which was not unloaded but exported without the state, and required the payment of three cents per gallon from the distributor on the balance of the gasoline so shown by the report to have been imported and unloaded and to be sold by the distributor within the state of Iowa. If gasoline was shipped in and not unloaded, it was not required to be included within the report.

4th. At one time the oil company requested the treasurer of state to treat gasoline imported to Carter Lake as being in Nebraska and called it the Omaha bulk station, and they were granted this permission and subsequent reports were made on that basis.

5th. In the spring of 1932, the Mona Motor Oil Company imported into the state of Iowa, or shipped from Carter Lake, Iowa, to other points in Iowa about 40 cars of gasoline.

[fol. 108] These cars of gasoline were billed and shipped as gas oil and lubricating oil and these shipments were not reported to the state officers as gasoline imported and unloaded within the state at the times they were so shipped.

6th. About April 8 or 9, 1932, the officers of the state and the officers of the Mona Motor Oil Company agreed to an audit of the books of the oil company by an independent auditing firm.

7th. When this report was received by the state treasurer, he demanded of the oil company $24,959.10 as claimed fees for gasoline imported and unloaded and not theretofore reported to the state treasurer. The attorneys for the oil company later denied owing the fees demanded by the state treasurer.

8th. On th 14th day of October, 1932, the state of Iowa and the state treasurer started an action in the state court to recover the fees theretofore demanded and accompanied the same by writs of attachment on the personal property of the oil company. This case was later transferred to the United States District Court but was remanded on the motion of the plaintiff on the ground that it was an action by the state of Iowa.

9th. On April 9, 1932, certain informations were filed before a justice of the peace in Pottawattamie County, Iowa, charging officers of the company with violations of the state law in filing false and incomplete reports and returns on gasoline.

10th. In August, 1932, 10 indictments were returned by the grand jury of Pottawattamie County, Iowa, against certain officials of the MonaMotor Oil Company, charging them with violations of the state motor vehicle fuel tax law and upon these indictments pleas of guilty were entered by some of the officials, fines assessed and the remaining indictments and charges thereunder dismissed.

11th. On October 14th, 1932, the state treasurer cancelled the license which had been issued to the MonaMotor Oil Company as a distributor and in writing advised the company of his action. The license was cancelled by the state treasurer upon the information contained in the Wolf & Company audit. No notice of or hearing was held by the state treasurer of an intention to cancel the license.

[fol. 109] 12th. The officers of the state of Iowa have no intention of further law actions or criminal actions against the MonaMotor Oil Company until the present litigation is terminated and the rights of the officers in the collection of the tax determined by the courts in the present proceedings.

13th. The L. L. Coryell Oil Company has been engaged in blending or compounding certain gasoline in Iowa from Naptha and they have failed or refused to pay certain taxes on gasoline they have blended out of naptha. Suit is now pending against the Coryell Company for the tax on that blended product and the state has through its officers insisted at all times that the naptha and blended gasoline are imported gasoline upon which a tax should be paid.

14th. The complainant has collected taxes from consumers of gasoline under the motor vehicle fuel tax statutes of Iowa and retains the same.

15th. Fact findings made by the court in the written opinion to which this order is attached may also be considered as fact findings herein.

Conclusions of Law

1st. The Court finds that neither the statutes under investigation nor the manner of their enforcement by the state officials impose any burden upon the interstate commerce engaged in by the plaintiff company.

2nd. That the provisions of the taxing statutes of the state of Iowa do not levy a tax upon the distributor of gasoline in the state of Iowa, but place upon such distributor the duty of collecting and paying the taxes assessed against the users of gasoline and permits him to recover the taxes paid by a collection from the users of gasoline within the state.

3rd. That the method of imposing the gasoline tax by the statutes attacked does not discriminate in favor of the users of gasoline other than for its use for propelling motor vehicles upon the highways of the state, as the tax is an excise tax upon persons using the motor vehicle fuel in operation of motor vehicles upon the highways.

4th. That the statutes providing for the additional one cent levy is not unconstitutional as violating the constitution of the State of Iowa.

5th. That there is no discrimination as against any manufacturer in the state of Iowa, as no such manufacturer of [fol. 110] gasoline existed at the time of the commencement of this action.

6th. That there is no discrimination shown by the evidence in the manner of the enforcement of the statutes of the state as against distillers or blenders of gasoline within the state, nor do the statutes so discriminate.

7th. That the actions taken by the state officers in bringing criminal and civil actions and in cancelling the license of the Mona Motor Oil Company was not done without justifiable reasons and cause shown.

8th. That the criminal cases and the action of the treasurer in cancelling the license of the complainant were all completed prior to the commencement of this suit and there is no threat at the present time of any further criminal proceedings or suits or procedure that would warrant the issuance of an injunction prohibiting the officers of the state from any such further proceedings.

9th. That the actions of the state treasurer in cancelling the license of the Mona Motor Oil Company, although done without notice and a hearing thereon, was within the authority granted to him by the state statutes and was not done without due process of law.

10th. That the suit is not against the sovereign state of Iowa, but against the officers of the state seeking to prevent the enforcement of the alleged unconstitutional statutes or of constitutional statutes in an unconstitutional manner.

11th. That to grant the relief asked by the complainant in this case would interfere with the proceedings in the state court by injunction, prohibited by the Judicial Code.

12th. As the complainant company has failed to offer or tender to pay back taxes collected by it under the statutes attacked, the complainant will not be allowed to retain its advantage or keep these taxes and then repudiate the act as unconstitutional.

Upon the findings of fact and conclusions of law above stated, it is hereby ordered that the petition of the complainant be and the same is hereby dismissed upon its merits and for lack of equity, with judgment against the complainant for costs. Complainant excepts.

By the Court.

(Sgd.) W. S. Kenyon, United States Circuit Judge. Geo. C. Scott, United States District Judge. Chas. A. Dewey, United States District Judge.

[fols. 111-114] Addenda "A" to opinion omitted, printed side page 71, ante.

[fol. 115] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed June 17, 1933

To the Honorable Charles A. Dewey, Judge of the District Court of the United States for the Southern District of Iowa:

Comes now the MonaMotor Oil Company, your petitioner, who is the plaintiff in the above entitled cause, and prays that it may be permitted to take an appeal from the finding, order, decree and judgment of the District Court of the United States for the Southern District of Iowa, sitting as a three-judge court composed of the Honorable Charles A. Dewey, the Honorable William S. Kenyon and the Honorable George C. Scott, duly entered in said court on or about the 29th day of March, A. D., 1933, dismissing the petition of the plaintiff on final hearing, and failing and refusing to grant to the plaintiff the relief sought therein, or any relief whatever.

The above named plaintiff, MonaMotor Oil Company, conceiving itself aggrieved by the final decree made and entered on the 29th day of March, 1933, in the above entitled cause, does hereby appeal from said finding, decree and judgment to the Supreme Court of the United States for the reasons specified in the Assignment of Errors which is filed herewith.

[fol. 116] Wherefore, petitioner prays that an appeal may be allowed to it from the said District Court of the United States for the Southern District of Iowa, sitting as above stated, to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Petitioner further prays that a supersedeas may be granted herein pending the final disposition of the said cause, and the amount of security may be fixed by the order allowing the appeal, and that citation issue as provided by law.

MonoMotor Oil Company, by (Sgd.) Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Its Attorneys

ASSIGNMENT OF ERRORS—Filed June 17, 1933

Comes now the Mona Motor Oil Company, plaintiff and appellant in the above entitled action, and files with its petition for appeal the following Assignment of Errors upon which it will rely in the prosecution of the appeal petitioned for in said cause from the judgment and decree of this court entered on the 29th day of March, 1933:

I

That the Court erred in refusing and denying the relief sought by the plaintiff and in dismissing the petition of the plaintiff, for the following reasons, to-wit:

(a) The defendants sought and were seeking to enforce a 3-cent tax on gasoline (motor vehicle fuel) based upon a 2-cent tax contained in Chapter 251-A1 of the Code of Iowa, 1927, which applied to a part of the period, and Chapter 251-A1 of the Code of Iowa, 1931; and a 1-cent per gallon tax upon gasoline as provided for by Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and on motor vehicle fuel as provided by Section 4755-b38 of the Code of Iowa, 1931, as if the same were a 3-cent tax on the same thing, when said statutes were unconstitutional and void [fol. 118] because in their relation to the business of the plaintiff, Mona Motor Oil Company, they were so uncertain and meaningless that the enforcement of the statute amounts to the taking of private property of the Mona Motor Oil Company without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, and denies to the complainant the equal protection of the law.

(b) That Chapter 251-A1 of the Code of Iowa, 1927, and as amended and appearing in the Code of Iowa, 1931, is in contravention of the Constitution of the United States as construed by the trial court, and in fact as authorizing the collection of a 2-cent tax on gasoline (motor vehicle fuel) as a 2-cent tax per gallon on gasoline (motor vehicle fuel) imported into the State of Iowa by the Mona Motor Oil Company, and therefore is a tax and burden upon interstate commerce and contrary to the commerce clause of the Constitution of the United States.

(c) That Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and Section 4755-b5 and Section 4755-

b38 of the Code of Iowa, 1931, is in contravention of the Constitution of the United States as construed by the trial court, and in fact, as authorizing the collection of a 1-cent tax on gasoline (motor vehicle fuel) as a 1-cent tax per gallon on gasoline (motor vehicle fuel) imported into the State of Iowa by the MonaMotor Oil Company, and therefore is a tax and burden upon interstate commerce and contrary to the commerce clause of the Constitution of the United States.

(d) That Chapter 251-A1 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, insofar as it may warrant, when properly construed, the collection of a license fee of 2 cents per gallon on gasoline (motor vehicle fuel) imported into Iowa for any month as a payment of the tax or license fee, not as a debt of the importer, but as a tax or license fee which may or may not subsequently become due from the user or consumer of gasoline (motor vehicle fuel), is unconstitutional and void and contrary to the commerce clause of the Constitution of the [fol. 119] United States, and denies to the MonaMotor Oil Company the equal protection of the law and amounts to the taking of private property of the MonaMotor Oil Company without due process of law contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it would compel the MonaMotor Oil Company to pay the debt of another in the first instance, without any statutory or legal right to collect the same from the user or consumer.

(e) That Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, and Chapter 251-A1 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, which may be part of the provisions relating to a 1-cent tax, insofar as they may warrant, when properly construed, the collection of a license fee of 1-cent per gallon on gasoline (motor vehicle fuel) imported into Iowa for any month as the payment of the tax or license fee, not as a debt of the importer, but as a tax or license fee which may or may not subsequently become due from the user or consumer of gasoline (motor vehicle fuel), is unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the Mona-

Motor Oil Company the equal protection of the law and amounts to the taking of the private property of the Mona-Motor Oil Company without due process of law contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it would compel the Mona-Motor Oil Company to pay the debt of another in the first instance, without any statutory or legal right to collect the same from the user or consumer.

(f) That the record shows conclusively that the Mona-Motor Oil Company was engaged in interstate business of selling gasoline (motor vehicle fuel) in original containers, and that a large part of its business was such interstate business and insofar as Chapter 251-A1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755 b5 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b38 of the Code [fol. 120] of Iowa, 1927, and as amended by the Code of Iowa, 1931, authorizes and compels the MonaMotor Oil Company to make reports of gasoline (motor vehicle fuel) Imported by it and to pay 3 cents per gallon license fee or tax thereon without statutory right of reimbursement from the purchaser of such gasoline (motor vehicle fuel) in original containers such as tanks cars, etc., the said acts are unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company the equal protection of the law, contrary to the Constitution of the United States, and amounts to the taking of private property of the Mona-Motor Oil Company, without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(g) In view of the fact that Chapter 251-A1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b5 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and each of them, affords no method of separation of the gasoline (motor vehicle fuel) imported in tank cars and original containers, as a part of the interstate business of the MonaMotor Oil Company in its sale in original containers to distributors, which is a substantial part of the business of the MonaMotor Oil Company, from the

business of the MonaMotor Oil Company as a retailer of gasoline (motor vehicle fuel), to enforce the statutes against the MonaMotor Oil Company, if either imposes a liability on the MonaMotor Oil Company for the payment of the tax measured by the aggregate of gasoline (motor vehicle fuel) Imported, and computing a tax of 3 cents per gallon thereon renders said acts and each of them in their enforcement and operation unconstitutional and void, and contrary to the commerce clause of the constitution of the United States as a direct burden on interstate commerce, and denies to the MonaMotor Oil Company the equal protection of law in the conduct of its interstate business, and [fol. 121] takes the private property of the MonaMotor Oil Company without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(h) That Chapter 251-A1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and said Chapter as a part of Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, insofar as it authorizes the Treasurer of the State of Iowa, without notice, as the record shows here was done, to cancel the license and authority of the MonaMotor Oil Company to engage in its interstate business of selling gasoline (motor vehicle fuel) in original containers, such as tank cars, etc., being a substantial part of its business, because of the alleged non-payment of tax or license fees, based upon and measured solely by imported gasoline (motor vehicle fuel), without giving it any opportunity to be heard as to its liability therefor or the amount thereof, amounts to and results in the destruction of its business and the taking of its property without due process of law, and contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, denies to the MonaMotor Oil Company the equal protection of law.

II

In view of the fact that Chapter 251-A1 of the laws of Iowa, Code of 1927 and 1931, in its relation to the interstate and intrastate business of the MonaMotor Oil Company, and its enforcement by the officials of the State of Iowa, levies or undertakes to levy, a 2-cent tax per gallon on imported gasoline or imported motor vehicle fuel, it is a tax

on such imported property, and as such on imports, and by reason thereof the court should have declared such statutes in contravention of Sections 8 and 10, Art. I, of the Constitution of the United States, and void, and erred in not so construing such acts and in not holding them unconstitutional.

III

In view of the fact that the sole and exclusive measure of the amount of tax sought against the Mona Motor Oil Company as a distributor under Chapter 251-A1 of the laws of Iowa, 1927 and 1931, is the amount of gasoline (motor [fol. 122] vehicle fuel) imported into Iowa, the tax is against imported gasoline or motor vehicle fuel as such, and is a direct burden on interstate commerce contrary to the commerce clause, Sections 8 and 10 of Art. I, of the Constitution of the United States, and void, and the court erred in not so holding, and in not granting to complainant the relief sought, by the enjoining enforcement of the acts against it.

IV

That the record shows other firms and corporations were mixing, blending and compounding gasoline and motor vehicle fuel in the State of Iowa, and that the court erred by reason of such facts in not holding that Chapter 251-A1 of the Code of Iowa, 1927 and 1931, and Sections 4755-b5 and 4755-b38 of the Code of Iowa 1927, and 1931, are unconstitutional and void in that the proper interpretation thereof gasoline and motor vehicle fuel refined or compounded and blended in Iowa, and not imported therein was not subject to the tax or license fee, and to tax imported gasoline or motor vehicle fuel and exempt from the tax gasoline or motor vehicle fuel refined or blended in Iowa, constitutes an illegal discrimination contrary to the commerce clauses of the Constitution of the United States, Sections 7 and 10 of Art. I, and denies to the plaintiff the equal protection of the law and takes property of the plaintiff without due process of law, all contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States.

V

By Section 5093-a1 of Chapter 251-A1, Code of Iowa, 1931,

"A license fee of two cents per gallon or fraction of a gallon is hereby imposed on *all* gasoline (Motor vehicle fuel) used or otherwise disposed of in the state for any purpose whatsoever. Any persons using gasoline (motor vehicle fuel) within the state shall be liable for the fee herein provided for unless the same shall have been previously paid,"

is created a liability on the "user" of gasoline (motor vehicle fuel) and to enforce such tax on the distributor who imports gasoline, because imported, is to make complainant pay another's debt and constitutes the taking of private property without due process of law and renders the whole [fol. 123] act contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the Court erred in not so holding and granting to the complainant the relief sought.

VI

That the court erred in dismissing the petition of the plaintiff and in denying the relief sought, because the statutes of the state of Iowa referred to hereinabove providing for the 1 cent and the 2 cent tax on gasoline (motor vehicle fuel) were unconstitutional and void for all of the reasons set out hereinabove.

VII

That the court erred in denying to the Mona Motor Oil Company the relief sought, and dismissing its petition, and in holding that said petition and the facts supporting the same was wanting in equity, and the court should have sustained the petition and granted the plaintiff the relief sought, for all of the grounds hereinabove stated.

VIII

That the court erred in its interpretation of Chapter 251-A1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, in holding that while the tax was levied on gasoline (motor vehicle fuel) used and disposed of in Iowa, it was a tax against the use of such gasoline by the consumer and that the payment of such license fee or tax must be made by the distributor or importer, the Mona Motor Oil Company, plaintiff; whereas, the court should have construed the statute as levying a tax on the user of

such gasoline (motor vehicle fuel) for which the distributor, MonaMotor Oil Company, was not liable, and particularly in view of the fact that the provisions of Section 5903-a5 of said acts, which originally specifically provided for liability of the distributor, were repealed from said statute prior to any of the acts complained of herein.

The court erred in dismissing plaintiff's petition and in denying the relief sought, based upon such erroneous interpretation of the statutes of Iowa.

[fol. 124] IX

The court erred in its interpretation of Chapter 251-A1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, in holding that the ultimate consumer pays the tax or license fee even though paid in the first instance by the distributor of gasoline (motor vehicle fuel) imported into Iowa, even though there is no provision in the law whereby the distributor, in this case the MonaMotor Oil Company, has any right of recovery in law from the consumer of such gasoline (motor vehicle fuel).

The court erred in dismissing plaintiff's petition and in denying the relief sought, based upon such erroneous interpretation of the statutes of Iowa.

X

The court erred in its interpretation of Chapter 251-A1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, as allowing a tax upon gasoline (motor vehicle fuel) in the hands of the user or consumer for which the distributor is liable under the statutes of Iowa.

XI

The court erred in its interpretation of Chapter 251-A1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, as giving to the state the right to exact the payment of the license fee or tax from the distributor of gasoline (motor vehicle fuel) imported into the state as the prerequisite to its right to distribute and sell gasoline in interstate commerce, and in holding that the state had the right to compel the distribution, upon the pains and penalties of the act, to first pay the tax of another as a matter of regulation in its interstate and intrastate busi-

ness in such products. And that the court erred in dismissing the petition of the plaintiff and denying the relief to it based upon such erroneous construction or interpretation of such alleged right of the state.

XII

The court erred in its interpretation of Section 4755-b5 and Section 4755-b38, Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, and particularly in interpreting [fol. 125] the tax or license fee as levied by said acts on gasoline and motor vehicle fuel the same as contained in Chapter 251-A1, when said acts specifically levy a tax on gasoline and motor vehicle fuel "imported and used in Iowa," and by reason thereof erred in refusing the plaintiff the relief sought and in denying plaintiff's petition on its merits.

XIII

The court erred in holding that Sections 4755-b5 and 4755-b38 were properly enacted, and in holding that they were not unconstitutional as violating Section 29 of Article 3 and Section 7 of Article 7 of the Constitution of the State of Iowa, and in denying to the plaintiff the relief sought, and in dismissing its petition by reason of such holding.

XIV

The court erred in holding and finding that plaintiff has in fact collected the tax or license fee from users of gasoline (motor vehicle fuel) under the statutes of Iowa, for the reason,

(1) There is no provision of the statutes of Iowa under which such collection can be made, or under which recovery can be had.

(2) That there is no competent evidence in the record in this case from which the court could find, as a matter of fact, that plaintiff had collected any such tax or license fee from the user or consumer of motor vehicle fuel.

XV

That the court erred in denying to the plaintiff the relief sought and dismissing its petition and not holding that

the statutes of Iowa were unconstitutional on the ground of estoppel, for the reason that there are no facts upon which estoppel could be based in the record. That the court erred in holding and finding as a fact that plaintiff received any benefits whatsoever under the statutes of Iowa. There is no competent evidence in the record from which the court could find, as a matter of fact, that plaintiff collected any tax from the consumer or user or retailer of gasoline (motor vehicle fuel).

[fol. 126] XVI

The court erred in not holding the statutes of Iowa above named, both as to the 1-cent tax or license fee and the 2-cent tax or license fee, unconstitutional and void, and contrary to the Constitution of Iowa, in that the statute levies a tax on all gasoline irrespective of the manner of its use, and when the tax is paid by the distributor, or paid by the plaintiff, Mona Motor Oil Company, that part of the act which refunds the tax or license fee on gasoline used for purposes other than the propulsion of motor vehicles on the highway, in that it taxes one class of persons, to-wit distributors of gasoline (motor vehicle fuel) for the benefit of another class of persons, to-wit, the users of gasoline (motor vehicle fuel) for uses other than the propulsion of motor vehicles on the highway, and that such exemption is so inextricably a part of the whole act that the whole act is unconstitutional and void for said reason, and the court erred in not decreeing that said statutes were unconstitutional for said reasons, and in denying to the plaintiff the relief sought, and in dismissing its petition.

XVII

That upon the record as a whole, the court erred in dismissing the petition of the plaintiff on its merits, and denying to the plaintiff the relief sought, and denying a permanent injunction against the state officers enjoining them from enforcing said statutes of Iowa as against this plaintiff.

Wherefore, appellant prays that the decree of dismissal entered herein be set aside and that the Supreme Court of the United States direct the District Court to sustain the

plea of the appellant and to grant the relief sought by the appellant and that it have such other and further relief as to the court may seem right and just in the premises.

(Sgd.) Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Attorneys for Mona Motor Oil Co., Plaintiff-Appellant.

[fols. 127 & 128] In United States District Court

Order Allowing Appeal—Filed June 17, 1933

Now on this 17th day of June, 1933, comes the petitioner-plaintiff, Mona Motor Oil Company, by its attorneys, and files herein and presents to the court its petition praying for the allowance of an appeal, and assignment of errors intended to be urged by it. Praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises, on consideration whereof the court does hereby allow the appeal to the plaintiff-petitioner and pursuant to stipulation filed herein the bond in the sum of $5,000.00 shall operate as a supersedeas bond.

It is further ordered that a certified transcript of the record, statement of evidence, exhibits, stipulations and all proceedings be forthwith transmitted to the Supreme Court of the United States.

(Sgd.) Chas. A. Dewey, Judge of the District Court of the United States for the Southern District of Iowa.

[fol. 129] In United States District Court

Stipulation With Respect to Bond—Filed June 17, 1933

It is hereby stipulated and agreed by and between the parties hereto that, with the approval of the court, and filing of a bond by the appellant, Mona Motor Oil Company, from decree and order of this court dated March 29, 1933, in the amount of $5,000 that such appeal may be prosecuted with the filing of such bond and that an order

of supersedeas be allowed by the court upon the filing of a bond in such amount.

Dated at Des Moines, Iowa, this 17th day of June, 1933.

(Sgd.) Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Attorneys for Plaintiff Appellant. Edward L. O'Connor, C. E. Hamilton, L. W. Powers, Attorneys for Defendants Appellees.

[fols. 130-143] Bond on Appeal for $5,000.00, approved and filed June 20, 1933, omitted in printing.

[fol. 144] In United States District Court

Application for Order Extending Time Within Which to File Record in the Supreme Court of United States—Filed July 17, 1933.

Comes now the MonaMotor Oil Company and asks the Court to extend the time within which to file the record of the said case in the Supreme Court of the United States to the 27th day of September, 1933, and as grounds therefor shows to the Court:

That the record in said case is very voluminous and that a large number of exhibits, such as gasoline tax reports covering many pages of figures, etc., are in the record, and a considerable amount of time is necessary to properly abstract the same so as to boil the record down to its proper size, and that in order to do this it will necessitate an extension of time.

Wherefore, the MonaMotor Oil Company asks the Court to make an order extending the time within which the record of said cause may be filed in the Supreme Court of the United States, to September 27, 1933.

MonaMotor Oil Company, by (Sgd.) Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Its Attorneys.

[fol. 145] In United States District Court

Order Extending Time Within Which to File Record—Filed July 20, 1933

Upon presentation of the application of the MonaMotor Oil Company for extension of time within which to file

record in the Supreme Court of the United States, and pursuant to the stipulation of the parties with respect thereto, it is hereby

Ordered by the Court that the time within which to file said record in the Supreme Court of the United States be and hereby is extended to September 27, 1933, and that the filing of the transcript and record in said Supreme Court of the United States within said time shall have the same force and effect as if the same were filed within forty (40) days from the issuance of the citation herein.

Dated this 20th day of July, 1933.

(Sgd.) Chas. A. Dewey, Judge.

[fol. 146] In United States District Court

Application for Order Extending Time Within Which to File Record in the Supreme Court of the United States. Filed September 23, 1933

Comes now the MonaMotor Oil Company and asks the Court to extend the time within which to file the record of the said case in the Supreme Court of the United States to the 27th day of October, 1933, and as grounds therefor shows the Court:

That the record in said case is very voluminous and that a large number of exhibits, such as gasoline tax reports covering many pages of figures, etc., are in the record, and a considerable amount of time is necessary to properly abstract the same so as to boil the record down to its proper size, and that in order to do this it will necessitate an extension of time.

Wherefore, the MonaMotor Oil Company asks the Court to make an order extending the time within which the record of said cause may be filed in the Supreme Court of the United States to October 27th, 1933.

MonaMotor Oil Company, (Sgd.) by A. G. Kistle, Paul E. Roadifer, Geo. S. Wright, Its Attorneys.

[fol. 147] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO FILE RECORD—Filed September 23, 1933

Upon the presentation of the application of the Mona Motor Oil Company for extension of time within which to file record in the Supreme Court of the United States, and pursuant to the stipulation of the parties with respect thereto, it is hereby

Ordered by the Court that the time in which to file said record in the Supreme Court of the United States be and hereby is extended to October 27th, 1933, and that the filing of the transcript and record in said Supreme Court of the United States within said time shall have the same force and effect as if the same were filed within forty (40) days from the issuance of the citation herein.

Dated this 23rd day of September, 1933.

(Sgd.) Chas. A. Dewey, Judge.

[fol. 148] IN UNITED STATES DISTRICT COURT

STIPULATION OF COUNSEL APPROVING STATEMENT OF EVIDENCE—Filed October 11, 1933

It is stipulated and agreed by and between the plaintiff appellant and defendants appellees, that the following statement of the evidence and exhibits attached hereto and by this reference made a part hereof, shall be and constitute a statement of the evidence and exhibits in said case for the purpose of the appeal thereof to the Supreme Court of the United States.

Dated this 11th day of October, 1933.

(Sgd.) Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Attorneys for Plaintiff-Appellant. Edward L. O'Connor, L. W. Powers, Attorneys for Defendants-Appellees.

IN UNITED STATES DISTRICT COURT

ORDER APPROVING STATEMENT OF EVIDENCE—Filed October 11, 1933

Upon the presentation of the above and foregoing stipulation and statement of evidence and exhibits in the above

entitled cause, signed by the attorneys for the above respective parties, it is hereby ordered by the court that the same shall be and constitute a statement of the evidence [fol. 149] and exhibits in said cause for the purpose of the appeal thereof to the Supreme Court of the United States.

Oct. 11, 1933.

(Sgd.) Chas. A. Dewey, Judge.

[fol. 150] IN UNITED STATES DISTRICT COURT

Statement of Evidence—Filed October 11, 1933.

Be it remembered that the above entitled cause came on regularly for trial before the above Court sitting in equity on the 6th day of Feb., 1933, on the issues formed by the petition and answer thereto, at which time the following evidence was offered by the plaintiff and the defendants respectively:

[fol. 151] STIPULATION OF FACTS

Par. 1. It is stipulated and agreed that the MonaMotor Oil Co. is a corporation duly organized and existing under and by virtue of the laws of the State of Arizona, and is a resident and citizen of the state of Arizona, and is doing business in Iowa as a foreign corporation. That the defendant, Ray. E. Johnson, was, at the time of the commencement of this action, the duly elected, qualified and acting Treasurer of the state of Iowa, and is a resident and citizen of said state, having his office at Des Moines, Iowa. That the defendant, John Fletcher, at the time of the commencement of this action, was the duly elected, qualified and acting Attorney General of the state of Iowa, and is a resident and citizen of said state, and had his office at Des Moines, Iowa. That the defendant, J. J. Hess, was, at the time of the commencement of this action, the duly appointed, qualified and acting Assistant Attorney General of the State of Iowa, in charge of the actions started by the state of Iowa against the MonaMotor Oil Co. for the enforcement of the statutes hereinafter referred to, and the collection of the license fees provided thereby, and that J. J. Hess is a resident of the state of Iowa, and Pottawattamie county, and the city of Council Bluffs. That

the defendant, Percy A. Lainson, was, at the time of the commencement of this action, the duly elected, qualified and acting sheriff of Pottawattamie County, Iowa, and his residence is at Council Bluffs, in Pottawattamie County, Iowa.

Par. 2. It is further stipulated and agreed that Leo J. Wegman was duly elected Treasurer of the state of Iowa, at the November, 1932, election for the term commencing on the second secular day of January, 1933, and that said Leo J. Wegman has been added as a party defendant, and the allegations of the petition made to apply to him as said Treasurer.

Par. 3. That said Edward L. O'Connor was duly elected attorney general of Iowa at the November, 1932, election, his term of office to commence on the second secular day in January, 1933, and that said Edward L. O'Connor has now been added as a party defendant and the allegations of the petition made to apply to him.

[fol. 152] Par. 4. That the MonaMotor Oil Company has power to sue and to be sued, and has its principal place of business in Council Bluffs, Pottawattamie County, Iowa, and is authorized to do and does business in the state of Iowa, and in other states, as a foreign corporation, and is engaged in Iowa in the business of buying and selling gasoline, motor vehicle fuel and other petroleum products, and has in the past, and up to April 1st, 1932 been engaged in the business of refining gasoline at Carter Lake, Iowa, and has, since that time, been engaged in the business of blending and compounding gasoline at said place. That the MonaMotor Oil Company is the owner of a gasoline refining, blending and compounding plant in the town of Carter Lake, Pottawattamie County, Iowa, at which place it had, prior to April 1st, 1932, refined, blended and compounded gasoline, motor vehicle fuel, and other petroleum products, and since April 1st, 1932, has blended and compounded gasoline at said plant. That the MonaMotor Oil Company maintains at said place bulk and storage tanks for the storage of gasoline refined, blended and compounded and purchased by said corporation. That Carter Lake, Iowa, is on the west side of the main channel of the Missouri River, and in moving said gasoline from Carter Lake, Iowa, it is necessary that said gasoline pass through the state of Nebraska

in arriving at any designated point in Iowa. That the Mona-Motor Oil Company is engaged in Council Bluffs, Iowa, in selling and delivering to customers and dealers in the state of Iowa, and in other states, gasoline, motor vehicle fuel and other petroleum products. That the plaintiff imports into the state of Iowa, gasoline and motor vehicle fuel, and prior to April, 1932, refined and compounded said gasoline in the state of Iowa, and since April, 1932, has compounded said gasoline in the state of Iowa. That the MonaMotor Oil Company maintains in Iowa a number of bulk and service stations for the storage of gasoline, in which stations are stored gasoline manufactured in Iowa and gasoline imported into Iowa, and prior to April 1st, and since that time, has stored gasoline imported into Iowa, and gasoline compounded and blended in refineries in Iowa. That all of the gasoline refined, compounded or blended that was moved to other points in Iowa from Carter Lake, Iowa, passed through [fol. 153] the state of Nebraska to bulk or storage stations in the state of Iowa. That from such bulk or storage stations gasoline is distributed to various dealers in Iowa, customers of the plaintiff, and to various service stations operated in Iowa by the plaintiff. That the plaintiff maintains and operates, owns or is the lessee of numerous service stations located at various points in the state of Iowa, and the MonaMotor Oil Company sells to customers in Iowa some of its gasoline, motor vehicle fuel, and other petroleum products manufactured in Iowa as aforesaid, and imported into Iowa.

Mr. Powers: The defendants object to the admission of the stipulation numbered four to the effect that the Mona-Motor Oil Company is authorized to do business in other states than Iowa, as a foreign corporation, and another statement in the stipulation that the MonaMotor Oil Company is engaged in the city of Council Bluffs, Iowa, in selling and delivering to customers and dealers, in states other than Iowa, gasoline and other petroleum products, for the reason that said stipulated facts are immaterial and irrelevant and not in issue in this case, there being no claim made by the state of Iowa, now or at any other time, and no attempt made by the state of Iowa to impose a license fee on the motor vehicle fuel that was sold by the MonaMotor Oil Company in states other than Iowa, or upon such motor vehicle fuel as was shipped from bulk station plants at Coun-

cil Bluffs, Iowa, to points outside of the state of Iowa, and there never has been any attempt to tax the MonaMotor Oil Company on such business, which is entirely outside and beyond the type and kind of business upon which the MonaMotor Oil Company pays, which is the subject of litigation herein.

Mr. Kistler: I assume we will take it subject to the objections?

The Court: I think, as the facts are prepared and stipulated, that should be the proper method of procedure. Don't you, Judge Kenyon?

Judge Kenyon: Yes.

Judge Dewey: We will give it consideration in the arguments, of course, gentlemen.

[fol. 154] Par. 5. That the MonaMotor Oil Co. operates 30 service stations in the state of Iowa, and leases 29 stations, which are operated by customers of the MonaMotor Oil Company, in the state of Iowa.

Par. 6. That the plaintiff, as the owner of bulk and service stations, pays a large amount of taxes upon said property to the state of Iowa, and pays in rentals upon service stations leased by the MonaMotor Oil Company, in a sum in excess of $5,000 per month.

Par. 7. That out of, from or through the bulk stations and service station plants in Iowa, the plaintiff sells many thousands of gallons of gasoline per month, together with a large amount of oil, grease, tires, and kindred products, in the sum of $12,000 per month, and that said business is conducted in various communities in the state of Iowa.

Par. 8. That as a part of the business conducted by the MonaMotor Oil Company is the sale of gasoline at Council Bluffs, Iowa, to many dealers in the states of Nebraska, Minnesota, South Dakota, and other surrounding states, said sales and deliveries of gasoline being from bulk stations in Iowa. That many of said sales so made in Iowa are for deliveries to be made to customers in the city of Omaha, Nebraska, and deliveries of gasoline to the city of Omaha are made from bulk stations and refineries at Carter Lake, Iowa. All of which is shown by the reports on file with the Treasurer of the state of Iowa, and it is stipulated and agreed that said reports, or any of them, may be of-

fered and introduced in evidence without objection, and identification thereof is waived.

Mr. Powers: The defendants object to the first two sentences in Par. 8 relating to sales by the MonaMotor Oil Company from its plants or storage tanks in Iowa, to points outside of the state of Iowa, for the reason there never has been any attempt, and there is no attempt now being made to tax the MonaMotor Oil Company on said business, and said fact is entirely incompetent, immaterial and irrelevant to the issues herein.

[fol. 155] Par. 9. That the MonaMotor Oil Company makes sales and deliveries of gasoline from its gasoline and storage in the state of Iowa, and transports said gasoline to other distributors and dealers in Iowa.

Par. 10. That the MonaMotor Oil Company in connection with the distribution of motor vehicle fuel, and for advertising purposes, operates a radio station at Council Bluffs, known as KOIL over which it broadcasts advertising of other customers, as well as advertsing motor vehicle fuel of the MonaMotor Oil Company.

Mr. Powers: Objected to as incompetent, immaterial and irrelevant to any issue herein, and for all the other reasons heretofore stated.

Judge Dewey: What do you claim for that?

Mr. Kistle: It is just an element in the interstate character of our business, is all.

Judge Dewey: Same ruling as in the other objections—received subject to the objections.

Par. 11. That as a part of the business conducted in Iowa by said MonaMotor Oil Company, said company imports into Iowa, from other states, in tank cars and other containers, and by tank trucks, said gasoline and delivers the same to certain other distributors and dealers in the state of Iowa. That said importation of gasoline is a part of the general business regularly conducted by the MonaMotor Oil Company, in the state of Iowa. That the sales are made in Iowa, and is what is commonly termed a jobbing business of gasoline, whereby the MonaMotor Oil Company supplies other distributors and dealers with gasoline in wholesale quantities, shipped from points outside of the state of Iowa, and that such business is now being conducted by the

Mona Motor Oil Company in the State of Iowa, and amounts to many thousands of dollars a month.

Mr. Powers: The defendants object to all of Par. 11 of the stipulation as wholly immaterial and irrelevant. The fact that the Mona Motor Oil Company is engaged in Interstate Commerce does not, in any way, exempt it from paying the license fee on motor vehicle fuel used in the state of Iowa or for use in the state of Iowa. That neither the state of Iowa, nor its officers, do now claim, or have they [fol. 156] ever claimed or attempted to impose a license fee on the shipments made by the Mona Motor Oil Company from its refinery in Texas to a distributor in Iowa. That so far as the Mona Motor Oil Company is concerned, the liability for the payment of the license fee on said shipments would rest on the distributor in Iowa, after he had used, or otherwise disposed of said motor vehicle fuel in Iowa, for use in Iowa, and the business referred to in Par. 11 of the stipulation is not such business as the State of Iowa had imposed a license fee on, and therefore the facts are immaterial and irrelevant.

The Court: Received subject to the objections.

Par. 12. That on the date shown by the application the plaintiff made a written application to the Treasurer for a distributor's certificate and license, as provided for in Section 5093-a4 of the Code of 1927. And it is stipulated and agreed that all of the records pertaining to said application in the office of the State Treasurer may be offered and received in evidence without further identification, and copies thereof may be substituted, if desired.

Par. 13. That pursuant to said application, the defendant, Ray E. Johnson, Treasurer of the State of Iowa, issued to the Mona Motor Oil Company a distributor's certificate and license, and it is agreed that a copy of such certificate and license may be offered in evidence, waiving identification and the objection that the same is not the best evidence.

Par. 14. It is stipulated and agreed that the statutes and session laws of the state of Iowa, attached hereto, are true and correct copies of the laws and statutes of the state of Iowa, and may be received in evidence without further identification, and the objection as to their being the best evidence is waived.

Par. 15. It is stipulated and agreed that all of the records and information in the Municipal Court, and the indictments in the District Court, together with all records in the office of the Clerk of the District Court, with reference to pleas thereon and dismissals thereof, may be offered in evidence without objection, and the attached copies be substituted for the originals of said records.

[fol. 157] Par. 16. It is stipulated and agreed that the copies of the original notice, the petition, motion to make the petition more definite and certain, motion to remove to the Federal Court and motion to remand, the writ of attachment, the dictation of the sheriff, and the return on the writ of attachment be received in evidence, and the objection that the same are not the best evidence is hereby waived.

Mr. Powers: I would like to have the agreement that the stipulation shall apply also to the order of remand.

Mr. Kistle: That is perfectly all right. We intended to put them all in.

Par. 17. That on August 15th, 1932, Ray E. Johnson, Treasurer, mailed to the MonaMotor Oil Company a letter, which was received August 16th, 1932, and that copy of the letter hereto attached is a correct copy thereof, and may be received in evidence waiving the objection that the same is not the best evidence.

Par. 18. It is further stipulated and agreed that for the months of June, July and August, the MonaMotor Oil Company filed with their report a protest, a copy of which is attached hereto, and it is stipulated that said copies of the report and protest may be treated as in lieu of the originals.

Par. 19. It is stipulated and agreed that from and after about the month of May, 1925, until the month of June, 1932, the plaintiff or complainant, on or about the 20th day of each and every month, filed with the Treasurer of State a gasoline and motor vehicle fuel report, and forwarded to the State Treasurer of the State of Iowa the license fees provided by the laws of the State of Iowa, as shown by said report, and that, during said period of time, the complainants at no time filed with the State Treasurer a written objection to the payment of said tax, or in any manner objected to the payment thereof for any reason whatsoever. Copies of reports to be made a part of the record.

Mr. Kistle: We have used two words. In some years the statute read "gasoline;" in some other years it read "gasoline motor vehicle fuel." I want to make that statement in explanation of the use of those words.

[fol. 158] Par. 20. It is further stipulated and agreed that prior to the month of June, 1932, no suits were begun in any of the courts of the state of Iowa, or of the United States within the state of Iowa, wherein it was claimed that the statutes of the state of Iowa, levying license fees upon motor vehicle fuel, were unconstitutional or void.

Par. 21. It is further stipulated and agreed that in most of the counties of the state of Iowa, during the years 1928, 1929, 1930 and 1931, elections were held at which the voters of the said several counties voted upon the question of the issuance of primary road improvement bonds, and that there was voted in the several counties of the state of Iowa more than $100,000,000 of such primary road improvement bonds, and in no case did a county vote primary road improvement bonds in excess of the amount which the highway commission of the state of Iowa estimated would be paid off out of said county's allotment of the primary road fund, and that such matters were known to this complainant.

Mr. Kistle: Plaintiffs object as immaterial and irrelevant.

Judge Dewey: The same record.

Par. 22. It is further stipulated and agreed that prior to the commencement of the complainant's action herein, a suit was commenced in the name of the state of Iowa, and R. E. Johnson, Treasurer of the state of Iowa, in the District Court of Pottawattamie County, Iowa, for the collection of certain alleged delinquent license fees, and that said suit was pending at the time of the commencement of plaintiff's action, a copy of the petition in said suit being attached to the complainant's petition.

Par. 23. It is further stipulated and agreed that that portion of the motor vehicle fuel produced, refined, manufactured or compounded by complainant within the state of Iowa during the time covered by complainant's petition, and shipped through Nebraska into Iowa, was mingled in Iowa with motor vehicle fuel shipped into Iowa from outside of the state during said period, and all such gasoline

or motor vehicle fuel, whether imported or compounded, was sold at the same price in Iowa.

[fol. 159] Mr. Roadifer: The way it is worded in this statement is a little wrong. The way we meant it is, "All that was sold in Iowa was sold at the same price, when sold in Iowa."

Mr. Kistle: I will change it, "When sold in Iowa." We should make it broad enough to cover gasoline instead of motor vehicle fuel.

Mr. Powers: What did you add, "When sold in Iowa?" I would like to agree that at least a part of it was sold.

Mr. Roadifer: No sir, we will not agree to that. We do not agree that any part of it was sold in the state of Iowa.

Mr. Powers: You are changing the stipulation.

Mr. Roadifer: We have been very specific in that no part of the gasoline moved from Carter Lake was sold in Iowa. That is the difficulty we had the other day.

Par. 23. (Continued.) That whenever, and at any and all places where the Mona Motor Oil Company sold gasoline as a dealer, the Mona Motor Oil Company displayed a placard as provided by Section 5093-a3, in the form therein prescribed.

Par. 24. It is further stipulated and agreed that none of the materials which are used to produce, refine, manufacture or compound motor vehicle fuels within the state of Iowa, originate within the state of Iowa, but that all are shipped into the state of Iowa from other states.

Par. 25. It is further stipulated and agreed that at the time of the offer of the matters and exhibits covered by the foregoing stipulation, either party may make the objection that the same is immaterial and irrelevant, but that all other objections thereto are waived.

Par. 26. This stipulation shall not prejudice the right of either party to offer further evidence on matters not herein agreed upon.

[fol. 160] OFFERS IN EVIDENCE

Mr. Kistle: The plaintiff, in pursuance of the stipulation, offers in evidence the entire file from the office of the Clerk of the District Court of Pottawattamie County, Iowa, in

Case No. 30294, entitled: State of Iowa and R. E. Johnson, Treasurer of the State of Iowa, Plaintiff, vs. The Mona Motor Oil Company, a Corporation, Defendant, which includes as follows:

Petition, filed October 14, 1932.

Writ of attachment, dated October 14th, 1932, together with the officer's return thereon, and the receipt, and the filing of such writ in the office of the sheriff; October 14, 1932.

Dictation to the sheriff, dated October 14, 1932.

Sheriff's return of writ of attachment attached thereto.

Notice to the defendant of attachment, dated October 14, 1932, filed in the office of the clerk of the district court October 21, 1932, together with the return thereon, showing service on Mona Motor Oil Company, October 18th, 1932.

Original Notice in said case (without date).

Also return thereon, showing service on the Mona Motor Oil Company, October 18th, 1932.

We also offer the filing mark in the office of the Clerk of the District Court as of date October 21, 1932.

Petition for removal, filed November 10, 1932.

Notice on said petition, filed November 10, 1932.

Also the order of removal.

Motion to make petition more definite, filed in the office of the Clerk of the U. S. Court, December 5, 1932.

Motion to remand the case to the District Court of Pottawattamie County, Iowa, filed December 23, 1932.

Amendment to motion to remand and petition to remand, filed December 29th, 1932.

Order on motion to remand, filed December [illegible] 1932.

Certificate of the U. S. Clerk.

Identification waived, and pursuant to stipulation herein filed of record the plaintiff offers in evidence an original letter, dated August 15th, 1932, from R. E. Johnson, Treasurer of the state of Iowa, to the Mona Motor Oil Company [fol. 161] at Council Bluffs, Iowa, wherein a demand was made for the sum of $27,455.01, together with the envelope in which it was delivered to the Mona Motor Oil Company, sent by registered mail, number 370,041, which I will read into the record:

"Office of the Treasurer of the State of Iowa

August 15th, 1932.

Mona Motor Oil Company, Council Bluffs, Iowa.

GENTLEMEN: We are in receipt of the report of an audit made of your institution by Wolf & Co., covering the period of January 1st, 1929, to March 31, 1932.

Folio eight of the report shows eleven cars of gasoline delivered to various companies. Of the eleven cars shown on the report, eight of them were located on reports of various distributions. The following three cars could not be located, as we find no record of the names shown as distributor or purchaser of the gasoline.

Date of invoice	Car number	Gallonage	Destination
January 31, 1929.....	NATX 5000	8139	JS Filling Sta., Council Bluffs, Iowa.
August 2, 1929.....	" 15152	7962	Bolton Oil Co., Clinton.
January 16, 1930.....	" 7465	8146	Co-operative Gas & Oil Co., Sioux Center.

The invoiced gallonage of these three cars amounts to 24,247. Deducting three per cent allowed for shrinkage therefrom leaves 23,520 gallons, on which tax at 3¢ per gallon amounts to	$705.60
Net total of gasoline imported into the state of Iowa and tax not paid (See Exhibit "A" Folio 10) is 808,450 gallons, which at 3¢ per gallon amounts to	24,253.50
Total	24,959.10
Penalty at 10% as provided by law	2,495.91
Grand total due the state of Iowa	$27,455.01

Demand is made at this time for payment of the unpaid tax. In making the report covering the amount claimed, use regular report blanks, setting forth gallonage as above stated, referring to the copy of the audit for verification of the gallonage.

Yours very truly, R. E. Johnson (Both in ink and type), Treasurer of State."

Attached to said letter is an envelope bearing the return mark of the Treasurer of the State of Iowa, addressed to

the MonaMotor Oil Co., containing registration stamp No. 370,041, with 19 cts. in U. S. Stamps.

[fol. 162] Mr. Kistle: In connection with the demand of August 15th, 1932, and as explanatory thereof, the plaintiff offers in evidence the audit of Wolf & Co., ordered prepared by the state of Iowa, and entitled, "State of Iowa Gasoline Tax Department, State Treasurer Audit of Gasoline production, purchase and sales record of MonaMotor Oil Co., Council Bluffs, Iowa, for the period from January 1st, 1929, to March 31st, 1932, by Wolf & Co., Certified Public Accountants," marked Exhibit 2.

Mr. Kistle: Identification waived, and pursuant to the stipulation heretofore entered into, the plaintiff offers and reads in evidence duly certified copies of the preliminary informations, nine in number, entitled "State of Iowa vs. MonaMotor Oil Co., a Corporation; H. A. Searle, President; F. H. Searle, Vice President; and E. D. Judd, Secretary Treasurer of said MonaMotor Oil Co., a Corporation," filed in the Municipal Court of Council Bluffs, Iowa, April 9, 1932, together with the notice served on the Mona Motor Oil Co. on April 14, 1932 and filed in the office of the Clerk of the Municipal Court April 15, 1932, together with the record of the Municipal Court of Council Bluffs, Iowa, with respect to such informations.

Mr. Powers: Is there a claim those informations are still pending, and that the court has any jurisdiction in those matters now?

Mr. Roadifer: We do not know whether they have or not. We are only offering them to show the facts as they now exist. I don't know a thing about it further than that. We will also offer the indictments, as they probably merged into indictments.

Mr. Kistle: They relate to some different matters, as a matter of fact.

Mr. Hess: The indictments were based on these transactions, and others.

Mr. Kistle: That may be your recollection, Mr. Hess, but I think you are mistaken.

Now, pursuant to the stipulation heretofore entered into, and identification being waived, the plaintiff offers in evidence ten indictments duly returned by the grand jury of Pottawattamie County against the MonaMotor Oil Com-[fol. 163] pany, a corporation, H. A. Searle, Sr., F. H.

Searle, E. D. Judd, H. A. Searle, Jr., and E. L. Walters, for alleged false and incomplete returns of gasoline imported by the MonaMotor Oil Co., a corporation, into the state of Iowa, each indictment covering a report of one month, and the following months: March, April, June and December, 1930; January, February, March, April, May and June, 1931, together with the minutes of testimony taken before the grand jury, and the record in the office of the Clerk of the District Court of Pottawattamie County, Iowa, with reference to pleas, dismissals and all proceedings had in said court upon each one of the said indictments.

Judge Dewey: Were all of the indictments dismissed?

Mr. Kistle: They were all dismissed as to the Mona Motor Oil Company, your Honor. The indictments were against the MonaMotor Oil Company and certain individuals.

Judge Dewey: Are they still pending against the individuals?

Mr. Kistle: There were pleas in six by individuals, and fines assessed and paid by the individuals, but as to the corporation, all were dismissed.

Judge Dewey: There are none now pending?

Mr. Kistle: No sir.

Now, Mr. Powers, may we stipulate that these three blanks were furnished by the State Treasurer to the Mona-Motor Oil Company and other distributors of gasoline?

Mr. Powers: I think that is a fact.

Mr. Kistle: Identification waived, it is stipulated that Exhibit 3 is a form designated as GTD, Form #14-A, furnished by the Treasurer of the State of Iowa to the Mona-Motor Oil Company and other distributors of gasoline and motor vehicle fuel, through the period involved in this case, for the purpose of making reports to the Treasurer of State of motor vehicle fuel or gasoline imported into the state of Iowa.

Also that Exhibit 4 is a part of said report entitled GTD, form number 115, and was in use during the period involved herein, and was furnished by the Treasurer of the State of Iowa for the purpose of making statements of sales of motor vehicle fuel sold and delivered outside of the state of Iowa.

[fol. 164] Also, it is stipulated and agreed that Exhibit No. 5 is a blank furnished by the Treasurer of the State of Iowa, designated as Form GTD-Form 7, upon which applications for a refund of license fees paid on motor vehicle fuel were made to the Treasurer of the State of Iowa for the period involved herein, and it is also stipulated and agreed that said Exhibits 3, 4 and 5 may be offered in evidence.

Mr. Roadifer: May we have the stipulation that up to this time no other forms have been prepared or are being used than those three?

Mr. Powers: We cannot agree that they are not being prepared. The fact is that new forms are being prepared. We can agree that they are not being used.

Mr. Roadifer: Up to this time there have been no new forms in use?

Mr. Powers: No sir.

It is stipulated and agreed that Exhibits 3, 4 and 5 are the only forms in use up to this time, and that no other forms for reports of refunds have been used other than 3, 4 and 5.

Mr. Powers: They have not been furnished by the Treasurer.

Mr. Kistle: These are the only forms that have been furnished by the Treasurer of State.

Mr. Powers: Yes sir.

Mr. Kistle: Identification waived, plaintiff offers and reads in evidence Exhibit 6, which is a letter dated November 27, 1929, from R. E. Johnson, Treasurer, to Mona-Motor Oil Company, Council Bluffs, Iowa, as follows:

PLAINTIFF'S EXHIBIT 6.

"State of Iowa, Treasurer of State, Des Moines, Iowa

November 27, 1929.

MonaMotor Oil Company, Council Bluffs, Iowa.

(Attention E. L. Walters)

GENTLEMEN: I am returning herewith your report of importation for the mouth of October, covering cars of gasoline received at Rembrandt and Dunlap, and ask that you

have same sworn to before a Notary Public and return to this office, together with your remittance for $466.83 in payment of fees.

Yours very truly, R. E. Johnson, Treasurer of State (typed), by R. M. Williams, Deputy (in ink)."

[fol. 165] Mr. Kistle: Identification waived, and pursuant to the stipulation heretofore entered into, the plaintiff offers and reads in evidence Exhibit 7, which is the original certificate of distributor, and application for license to transact business as a distributor of gasoline within the state of Iowa, made by the MonaMotor Oil Company and signed by E. L. Walters, Traffic Manager, and under the date of June 2, 1927, together with the date of filing as of June 3, 1927, in the office of the Treasurer of the State of Iowa, as follows:

PLAINTIFF'S EXHIBIT 7

Stamped: "Received June 3, 1927"

"Certificate of Distributor and Application for License to Transact Business as a Distributor of Gasoline Within the State of Iowa

To the Treasurer of the State of Iowa, Des Moines:

As required by Sec. 3, Senate File No. 347, 42 G. A., the following information is furnished:

Name under which business is transacted in State of Iowa: MonaMotor Oil Company.

Principal place of business of distributor, and P. O. Address: Council Bluffs, Iowa.

If a corporation, give names and addresses of

(a) President: F. H. Searle;

(b) Vice-President: L. W. Kinyon;

(c) Secretary: H. A. Searle.

(d) Treasurer: E. D. Judd.

State in which incorporated: Arizona.

(1) I do hereby certify that the information given above is true and correct, and I hereby make application for a license to transact the business of a distributor of gaso-

line within the state of Iowa as defined in Sec. 2, Chap. 6, Laws of the 41 G. A.

(Name:) MonaMotor Oil Company, by E. L. Walters, (Title of Signer:) Traffic Manager. (P. O. address:) Council Bluffs, Iowa.

Subscribed and sworn to before me at Council Bluffs, Iowa, on this 2nd day of June, 1927. (Signed) B. T. Hill, Notary Public. (Seal.)"

Mr. Kistle: Identification waived, and pursuant to the stipulation heretofore entered into, the plaintiff offers and reads in evidence Exhibit 8, which is the financial statement made by the MonaMotor Oil Company of Council Bluffs, Iowa, as of the balance sheet of November 30, 1929, dated May 14, 1930, and marked, "Received May 15, 1930, Treasurer of State."

[fol. 166] PLAINTIFF'S EXHIBIT 8

"Name: MonaMotor Oil Co.

Address: Council Bluffs Iowa.

Balance Sheet as at November 30, 1929.

Approved this May 15, 1930.

Signed with stamp: R. E. Johnson, Treasurer of State, by (in ink) R. M. Williams, Deputy.

MonaMotor Oil Company, Council Bluffs, Iowa.

Statement of Financial Condition, November 30, 1929.

Assets

Current Assets:		
Cash on hand and in banks		$92,536.09
Accounts receivable—trade	$601,753.92	
Less reserve for doubtful accts	43,000.00	558,753.92
Notes receivable—trade	56,213.06	
Less reserve for doubtful accts	10,000.00	
		46,213.06
Contracts receivable		4,696.23
Inventories		602,474.21
		1,304,673.51
Other Assets:		
Accts. Receivable, Shepard Laboratories		25,722.14
" " Neatsfoot Harness Oil Co		10,359.85
Personal accounts and notes receivable		18,852.98
Long term lease notes		5,721.69
Real estate investments (depreciated value)		5,963.24
		66,619.90

Fixed Assets:		
Real Estate	36,195 57	
Buildings, equipment, &c	595,764 07	
Less reserve for depreciation	90,536 23	
	505,224 84	541,420 41
Deferred charges		16,585 78
		1,929,299 60
Liabilities		
Current Liabilities:		
Accounts payable trade	73,068 19	
Accounts payable personal	9,582 91	
Notes payable	422,360 00	
Interest accrued	405 61	
Taxes accrued real and personal	8,639 82	
Gasoline tax accrued	17,723 86	
Bonus accrued	3,000 00	
Commissions payable	1,357 76	
Reserve for coupons	1,639 08	
Greasing reserve	1,472 50	
Federal income taxes accrued (for year ending November 30, 1929)	31,398 80	573,784 53
Net Worth:		
Capital Stock	1,100,000 00	
Surplus	255,551 07	1,355,551 07
		$1,929,299 60

[fol. 167] This report is made after charging off heavy depreciation, all known bad accounts.

Mona Motor Oil Co., by H. A. Searle (in ink) Secretary and General Manager."

I, being first duly sworn, state that the foregoing is a true and correct financial statement as to the close of business of Nov. 30, 1929.

Mona Motor Oil Co., by H. A. Searle (in ink) Secretary.

Subscribed and sworn to by H. A. Searle, before Notary, with seal.

EXHIBIT 9

"State of Iowa, Treasurer of State

Des Moines, Iowa.

To Mona Motor Oil Company,
Council Bluffs, Iowa.
E. B. Reeser, President;

H. M. Edinger, Vice President;
Clyde Fuller, Vice President:

This is to inform you that the license issued by this department in June, 1927, authorizing you to engage in business as a licensed distributor of gasoline in the state of Iowa, is hereby revoked, all according to law. From this date it shall be unlawful for you to continue or engage in the business of distributing motor vehicle fuel in the State of Iowa.

(Signed) R. E. Johnson, Treasurer of State."

Dated October 14, 1932, at 1:30 P. M.

Mr. Kistle: Identification waived, pursuant to the stipulation heretofore entered into, the plaintiff offers in evidence the above notice of cancellation, waiving the fact that the offer is of the copy, and not the original.

Mr. Kistle: Identification waived, plaintiff offers in evidence Exhibit 10, a letter dated April 18th, 1932, from Mr. Johnson, State Treasurer of the State of Iowa, to the MonaMotor Oil Company, of Council Bluffs, Iowa, as follows:

EXHIBIT 10

"Des Moines, Iowa, April 18th, 1932.

MonaMotor Oil Co., Council Bluffs, Iowa.

GENTLEMEN: This is to certify that Fred J. Petersen and [fol. 168] assistants, of Wolf & Co., have been appointed as auditors by this department to make an audit of your records in connection with tax matters on gasoline imported and sold by you.

Very truly yours, R. E. Johnson (typed), Treas. of State. R. E. Johnson (ink)."

Mr. Kistle: Identification waived, and pursuant to the stipulation heretofore entered, the plaintiff offers in evidence exhibit number 11, which are original reports filed by the MonaMotor Oil Company with the State Treasurer, pursuant to which payments were made by the MonaMotor Oil Company to the State Treasurer, covering the period from June, 1929, to December, 1929, both inclusive.

Mr. Kistle: Identification waived, and pursuant to the stipulation heretofore entered into, the plaintiff offers in

evidence Exhibit 12, which consists of original reports filed by the Mona Motor Oil Company with the State Treasurer during the years 1930 and 1931.

Mr. Kistle: Pursuant to the stipulation heretofore entered into, and identification waived, the plaintiff offers in evidence the original reports of the Mona Motor Oil Company filed with the State Treasurer from June, 1928, to May, 1929, and marked as Exhibit 13.

Mr. Kistle: Identification waived, and pursuant to the stipulation heretofore entered into, the plaintiff offers in evidence Exhibit 14, original reports filed by the Mona-Motor Oil Company with the State Treasurer of Iowa, covering the period from May, 1931, and including May 13, 1932. I find we do not have June, July or August present.

Mr. Powers: Are they available, Mr. Johnson?

Mr. Johnson: They are in the office.

Mr. Powers: We will send for them.

Mr. Kistle: Identification waived, the plaintiff offers in evidence Exhibit 15, pursuant to the stipulation heretofore referred to, which consists of reports of the Mona-Motor Oil Company to the State Treasurer of Iowa for the [fol. 169] months of June, July and August, together with the protest attached thereto.

Mr. Kistle: Identification waived, and pursuant to the stipulation heretofore referred to, the plaintiff offers and reads in evidence Exhibit 16, which is a statement of the amount of gasoline tax refunded by the State Treasurer for each year, beginning in 1925 and ending in 1932, made and prepared by the State Treasurer from records in his office.

Mr. Powers: Objected to as incompetent, immaterial and irrelevant to any issue in the case.

The Court: Received subject to the objections.

It is agreed and stipulated, subject to the objections of immateriality and irrelevancy, that the aggregates shown on Exhibit Number 16 include all refunds made, of every kind and nature, including refunds for gasoline used, other than for the use of a motor vehicle on the highway, and for gasoline destroyed.

EXHIBIT 16

"Gasoline Refunds paid by months since April, 1925.

Total for the above period	$6,562,082.51	
Administrative	138,531.72	
Refund total	$6,423,550.79	
1925		
ay (also April)	397.53	
ne	1,379.91	
y	9,605.01	
gust	5,514.87	
ptember	13,320.14	
tober	11,770.76	
vember	20,526.31	
cember	5,949.76	Administrative total $5,520.18
Total	68,464.29	
1926		
nuary	18,297.79	
bruary	13,219.35	
arch	8,975.16	
ril	8,942.09	
ay	10,245.08	
ne	14,818.22	
y	21,986.28	
gust	15,826.55	
ptember	24,137.37	
tober	24,395.01	
vember	19,250.01	
cember	6,480.99	Administrative total 10,736.24
Total	186,156.41	
1927		
nuary	27,592.72	
bruary	8,159.70	
arch	15,107.15	
ril	11,439.86	
ay	5,423.57	
ne	42,468.93	
y	18,548.47	
gust	33,326.37	
ptember	61,909.68	
tober	63,576.86	
vember	48,822.19	
cember	51,811.61	Administrative total $14,195.16
Total	388,187.11	
1928		
nuary	40,722.38	
bruary	27,358.94	
arch	37,272.31	
ril	42,010.74	
ay	58,428.23	
ne	65,700.82	
ly	42,304.54	
gust	75,632.69	
ptember	68,653.69	
tober	81,950.18	
vember	67,293.52	
cember	28,293.52	Administrative total 23,134.53
Total	665,871.87	

	1929		
January	46,935.58		
February	28,614.41		
March	32,525.35		
April	38,238.05		
May	73,910.75		
June	108,678.69		
July	82,663.20		
August	95,482.38		
September	92,620.04		
October	100,073.30		
November	86,834.30		
December	83,100.64	Administrative total	29,562.92
Total	$869,676.56		

	1930		
January	59,310.95		
February	22,556.07		
March	41,980.65		
April	77,310.86		
May	103,827.36		
June	147,298.34		
July	95,651.63		
August	130,176.04		
September	118,715.21		
October	151,574.07		
November	123,314.46		
December	135,677.08	Administrative total	32,524.57
Total	$1,209,392.72		

[fol. 171]

	1931		
January	96,484.61		
February	53,508.83		
March	76,890.81		
April	105,622.01		
May	152,323.27		
June	158,241.20		
July	126,569.85		
August	164,541.53		
September	149,881.62		
October	138,972.47		
November	112,525.11		
December	115,566.41	Administrative total	$22,858.12
Total	$1,451,127.72		

Administrative separated after July 1931

	1932
January	124,424.92
February	77,058.44
March	92,932.85
April	115,461.43
May	154,426.19
June	190,293.78
July	151,508.94
August	165,297.70
September	169,681.09
October	159,337.57
November	208,025.59
December	114,757.33
	$1,723,205.83 (Trans. pp. 5 to 38 incl.)

RAY E. JOHNSON, called and sworn as a witness for plaintiff, testified as follows:

My name is R. E. Johnson, and up to January 1st of this year I was State Treasurer of Iowa, and was State Treasurer on October 14, 1932. In a general way I was familiar with the litigation of the MonaMotor Oil Company with reference to taxes, and the complaints filed in criminal courts, and I remember the circumstance of the cancellation of the license of the MonaMotor Oil Company. At that time, or immediately before the cancellation, no notice was given the company or any hearing with reference thereto—I simply made an entry in my records of the cancellation of the license, notifying the company by mail to that effect.

With reference to this cancellation, prior to that time I had been demanding payment of certain claimed taxes under the audit of Wolf & Company from the company. There had been instigated at that time, certain criminal prosecutions against the company based on the same information [fol. 172] furnished by Wolf & Company with reference to false reports. There was no other or different information than that of the audit of the Wolf Company. (Trans. pp. 38 to 41 incl.)

Cross-examination:

I said these criminal prosecutions were instigated as a result of something that the audit disclosed, but I believe, when I come to think about it, it was before on the information of our under-cover agents, and then sustained by the audit of Wolf & Company. The criminal prosecutions long antedated the report which came about as a result of the criminal prosecutions, rather than as the criminal prosecutions being the result of the report. I had the information when this license was cancelled. I had some under-cover agents operating in that territory at the time.

Q. What information did you have as to the MonaMotor Oil Company transporting gasoline as lubricating oil, or anything of that kind?

Mr. Roadifer: Objected to as immaterial, irrelevant, and it is privileged, insofar as it was disclosed by a compulsory [fol. 173] examination of the books and the records of the

MonaMotor Oil Company, and in direct violation of the terms of the statute.

Judge Dewey: We will take it subject to the objections.

A. Gasoline shipments from the East Omaha plant as lubricating oil, and received in Council Bluffs as gasoline.

The criminal prosecutions were started somewhere near the date after the information had been received.

Q. What, if anything, did you or your agents have in the way of any communication or transaction with the Mona-Motor Oil Company agreeing on an audit, or determining what tax they owed, if any?

Mr. Roadifer: Objected to as incompetent, immaterial and irrelevant to any issue in the case.

Judge Dewey: Prior to the order of cancellation?

Mr. Powers: Yes sir.

Judge Dewey: Answer subject to the objections.

A. There was an agreement made and changed the next day. They wished their auditors to make the audit. Later the Attorney General objected, and Wolf & Company were employed to make an independent audit.

This was not in pursuance of any talk or any arrangement with the MonaMotor Oil Company. I had no conference with them on that score. I understood the Attorney General did have a conversation in the way the audit was made. Mr. Hess furnished them with a copy of the audit, he was then representing the state. I do not know what objections, if any, they made to the correctness of the audit, and I do not recall that they raised a question about some one or two cars, and I don't remember Hess calling me on the phone about some of the cars and my authorizing him to omit those cars. There was no direct refusal to pay the tax which the audit showed to be due, before I cancelled the license—they failed to do it, they have not paid it. After demand was made I received a letter from their attorney asking for thirty days to review the Wolf audit and I granted that thirty-day period. I could not say that I was advised, either by the company or their agents that they would refuse to pay the tax. (Trans. pp. 41 to 44, incl.)

[fol. 174] This is the letter I have referred to, Exhibit 17.

Mr. Powers: As a part of the cross examination of the witness Johnson, I offer in evidence Exhibit 17, as follows:

EXHIBIT 17

Law Offices of Wright & Baldwin

Council Bluffs, Iowa,
August 17, 1932.

Hon. R. E. Johnson, Treasurer of State, Des Moines, Iowa.

DEAR SIR: Your demand, dated August 15th, 1932, upon the MonaMotor Oil Co., covering the payment of the claimed tax and penalty amounting to $27,455.01 was received by the company at the same time that Mr. Hess, your attorney, placed in our hands a copy of the state's audit. Inasmuch as, for some reason or other, our first agreement to make a joint audit was set aside, and our auditors were requested to stay away from the books until such time as your auditors had made this audit, and it will require some time for our auditors to check this audit, which contains some seventy or more pages of figures, and to report to the company as to what their conclusions are with reference to the correctness of your figures. I think this can be accomplished within say the next thirty days, and the audit has been placed in their hands with instructions to crowd it along with the utmost possible speed. Just as soon as we have a report from them I will communicate further with you.

With personal regards, I am,

Yours very truly, (Signed) Geo. S. Wright.

Stamped: "Received August 18, 1932." (Trans. pp. 44, 45.)

Mr. J. J. Hess, representing the Attorney General, was looking after this transaction as far as the state was concerned during this period, and the details of the transaction as to the MonaMotor Oil Company and the state was handled through him. (Trans. p. 45.)

Redirect examination:

There was a Mr. Meade representing my office in connection with this matter; also, up to January first he was employed by my office, and as far as I know he is still in the employ of the state.

I had had personally some information at the time the first criminal informations were filed by Mr. Meade in the District Court with reference to certain cars of gasoline that were claimed to be omitted from the MonaMotor re-
[fol. 175] ports, and that was gasoline that had been moved from Carter Lake, Iowa, to the bulk plant at the City of Council Bluffs, and the information I had upon which those informations were filed against the company was at that time confined wholly to the omission of certain tank car shipments which had been shipped by the company from Carter Lake, Iowa, to Council Bluffs, Iowa, from their reports, and on that information Mr. Meade acted for my office in filing these informations. That is the first step that was taken with reference to this matter after I obtained the information, was the filing of the information at Council Bluffs, and the next step in the proceeding was the request made by my office for an audit of the company's books. There were continuances from time to time in the criminal actions. It was first proposed that the audit be a joint audit made by the company and the State Treasurer's office auditors, that these two sets of auditors would work together and arrive at the facts. The auditors in my office were not certified accountants. Later the Attorney General's office decided that it would not be advisable. Then the request was made by my office that Wolf & Company, certified accountants employed by the State of Iowa, be allowed to make an examination of the books and an audit of the books, independent of the auditors of the company. (Trans. pp. 45, 46, 47.)

At the time that request was made of the MonaMotor Company to examine the books I furnished to the MonaMotor Oil Company a statement that Fred J. Petersen and assistants, from Wolf & Company, had been employed or appointed as auditors by my department to make an audit of the records in connection with the tax matters on gasoline imported and sold. That was signed and furnished to the company prior to the time this examination was made. (Trans. p. 47.)

That audit, with reference to the particular cars on which I filed the first criminal information, disclosed the same facts upon which I already had information, with reference to certain cars of gasoline that had been moved from Carter Lake, Iowa, to the Council Bluffs bulk plant,

and had not been shown on the reports. It verified my first information with reference to certain gasoline upon which I had based my original criminal informations. As to [fol. 176] whether the information furnished me by the auditors disclosed other gasoline moved by truck from the Carter Lake Bulk plant to the Council Bluffs bulk plant, I would have to refer to the auditor's report to answer that. I have no independent recollection of that. I do particularly have in mind that the first information I had upon which criminal actions were started referred to tank car shipments from Carter Lake to Council Bluffs. (Trans. p. 48.)

In August, 1932, after this audit was completed, I prepared and had forwarded to the company a demand for the payment of certain taxes based on this audit. The demand was written by me personally, with my personal signature. In that demand, referring to Folio 8, I have no personal knowledge or recollection with reference to the item of $705.60, only as set out in the report and as stated and referred to in the report. That item of $705.60 applies to gasoline that was shipped from Oklahoma direct to another distributor other than the MonaMotor Company in Iowa, or other distributors, the J. S. filling station, or the Holton Oil Company, or the Co-operative Oil Company, Sioux Center, Iowa, and only handled by the Mona-Motor Company as a jobber, was consigned to the Mona-Motor Oil Company evidently within the state of Iowa. I have no definite recollection as to those three cars without reference to the auditor's report. The demand was made in accordance with the information that the auditor had furnished me. (Trans. pp. 48, 49.)

I think the majority of the gallonage was omitted from the reports of the MonaMotor Company by reason of their failure to report gasoline moved from Carter Lake, Iowa, their refinery and bulk plant at that place, to the bulk plants of the company in Iowa. The greater portion of my claim is based on gasoline of that character that originated from Carter Lake and moved to places or points in Iowa and that they failed to report to the State of Iowa that movement of gasoline. The other items that go to make it up are simply discrepancies in gallonage or minor matters. There were a number of discrepancies in the amount of gallons, or other gasoline that was imported into Iowa

that makes up part of this difference. The company had [fol. 177] reported a number of cars of imported gasoline throughout this period of time and there was a discrepancy in the number of gallons as reported by the company and the number of gallons as found by the auditor.

Q. And upon that difference, up to the time you went out of the office, you were asserting, as against the Mona-Motor Oil Company, the right to collect that difference upon the cars shown by that audit, as imported gasoline.

Mr. Powers: Objected to as asking for a conclusion of the witness; the document itself shows what the demand was as against the MonaMotor Oil Company.

Judge Dewey: You mean the case in Council Bluffs?

Mr. Powers: Yes sir.

Judge Dewey: This suit is entirely distinct from that.

Mr. Powers: This has nothing to do with it.

Judge Dewey: Take it subject to the objections.

A. On gasoline imported for use or otherwise disposed of in this state, yes sir

Q. Please confine your answer to this audit, and these particular cars of imported gasoline. Is there anything in the audit to show that the MonaMotor Oil Company ever used or disposed of that gasoline at all? Do you know that as a fact?

Mr. Powers: Objected to as incompetent, immaterial and irrelevant, and the witness is incompetent. He is not the auditor who made the report, and he is incompetent to testify concerning it.

Judge Dewey: Received subject to the objections.

A. The report will show that. I could not answer that question. I cannot answer it except as my report would show.

Judge Dewey: You say you are demanding a tax on gasoline imported to be used in the state later, or disposed of?

A. Yes sir, that was to be used.

Judge Dewey: You did not wait until it was used before you demanded the tax, but demanded it if it were brought in for the purpose of later disposing of it, or used?

A. That is a construction of the statute. I could not answer it.

Judge Dewey: What did you do as Treasurer?

A. We collected on the gasoline.

[fol. 178] Judge Dewey: Before it was used or disposed of?

A. No sir, the report was due on the 20th of the following month, the assumption being that the gasoline of the previous month would be used, giving them full credit for all gasoline that was sold to be used outside of that.

Judge Dewey: You say you went on the assumption that all they brought in was used or disposed of by them?

A. Yes sir.

Judge Dewey: And they paid without making a return as to whether or not they used or disposed of it; in other words, they did not use it or dispose of it, and then return the tax, and you made it up for taxation on all that was brought in, whether they had used it or disposed of it, or not?

A. Only the amount that was brought in that was used in the state or to be used in the state.

Judge Dewey: That is the point I am trying to get at, whether you waited until after they used it, or before it was used, you demanded the tax before it was used, if you thought it was brought in for the purpose of being used later in the state?

A. It possibly would work out that way, if some of the gasoline was held over past the 20th.

Judge Dewey: How is that?

A. They had twenty days in which to report from the previous month. They might have some of the stock on hand after the 20th.

Judge Dewey: All they reported was what they brought into the state by importation? That was the basis on which they made a report to you, was on the importation, was it not?

A. That was the measuring stick for the purpose of determining it.

Judge Dewey: Did you require the tax on the importations in bulk, as a basis, instead of what was sold or disposed of?

A. The "net importation," I will put it, the part that was actually used in Iowa, or intended to be used in Iowa.

Judge Dewey: You keep putting in "intending to be used," but I think I understand it.

Q. For the gasoline report you required was the tank car capacity. We will refer to the tanks shipped from Tulsa, Oklahoma, to the MonaMotor Company?

[fol. 179] A. Its invoiced gallonage in capacity. (Trans. pp. 48 to 53, incl.)

I required them to report the invoiced gallonage of that tank car on or before the 20th of the month after that tank car was received. I required a report showing the invoiced gallonage of that tank car, and from that 3% was deducted for evaporation and loss. We deducted what was sold without the state first. We did not figure the tax until the deduction. At the time I computed that tax I had no knowledge or information of any report required as to whether or not that particular gasoline would be shipped out of Iowa during the next month. In other words, if they held that car from the time they received it until sometime in the next month and then shipped it into South Dakota, that car would then be deducted on the next month's report. At the time I required the payment of the tax I had no knowledge or information as to where that particular car of gasoline might be used, only as to its unloading point. (Trans. pp. 53, 54.)

Q. And if they kept that in storage past the 20th of the following month you would be collecting three cents per gallon before that particular gasoline was ever used or disposed of. That is true, isn't it?

A. What do you mean by "storage?" Is it tank car or bulk plant?

Q. Just to illustrate it. Supposing they set a tank car of gasoline out on a siding, and hold it there in the tank car until after the 20th of the next month?

A. The tax would not be collected in that event. It would not be unloaded.

Q. Don't you require a report of that character whenever it is moved into the state of Iowa?

A. We require an unlading date.

Mr. Powers: All this is objected to as incompetent, immaterial and speculative. It has no relation or connection with any fact or circumstance in connection with this case.

Judge Dewey: I have been thinking about that. This seems to be based on, what was it—nine or ten cars or transactions in the report?

[fol. 180] Mr. Powers: The stipulation shows they were unloaded and moved and mixed with other gasoline at Council Bluffs. There was more than nine (9) cars. I thought it was about forty (40) cars.

Mr. Roadifer: There are two classes you should be interested in. One is gasoline moved from Carter Lake to bulk plants in Iowa. The other, a class of gasoline upon which they are asserting a claim, would be gasoline shipped from Tulsa, Oklahoma, imported into Iowa to the Mona Motor Oil Company, upon which cars they claim an additional amount, which has already been paid, during this period of time. It is a different method of computing the gallonage.

Judge Dewey: It was my idea that you ought to limit it to that, and not generally.

Mr. Roadifer: Perhaps that is correct. (Trans. pp. 54, 55 and 56.)

If the gasoline had been held in storage at Council Bluffs until after the 20th of the month, then the payment of the tax would be made to the State of Iowa before the company had disposed of the gasoline, unless they sold it without delivering it. If they did not, it would be paid in advance. That is also true of gasoline that the company has in storage on the 20th of the month in all of their bulk plants. (Trans. pp. 56, 57.)

Q. So that, to the extent that the Mona Motor Oil Company, on the 20th of the month, had stock on hand immediately after the 20th of the month, upon that particular stock on hand you would have collected the tax before they had disposed of the gasoline?

Mr. Powers: Objected to as incompetent, immaterial and irrelevant to the issues.

[fol. 181] Judge Dewey: Received subject to the objections.

A. As to gasoline imported the previous month and on hand the 20th of the following month.

Q. To that extent you have collected the tax every month before the gasoline has been disposed of?

A. Not between the first and the 20th of the month.

Q. No, I mean gasoline, say you had taken an inventory of this imported gasoline on hand the 20th of the month, and you collected your tax on the 20th, to that extent that

gasoline is carried over you have collected the tax before they have disposed of it. That is true, isn't it?

A. No. What they reported between the first and the 20th could be in that invoice on the 20th, and not taxable the following month.

Q. There might be a portion of it?

A. There would only be that part of the invoice that came in the preceding month, 20 days earlier.

Judge Dewey: I don't know as I understand that. You mean when they made the report it was the 20th?

A. Yes sir.

Judge Dewey: Did you not make them pay taxes on everything they had in storage?

A. No, sir, only what they imported the previous month.

Judge Dewey: Thirty days before?

A. And they have twenty days in which to pay the preceding months' taxes, in the following month.

Judge Dewey: On what report was that based?

A. That would be each month's report. Anything they got in the month of February they would have until the 20th of March to pay the taxes on.

Judge Dewey: And it is based on the report of the preceding period?

A. That is right.

Mr. Roadifer: I would like to examine to get it in the record clearly.

Mr. Powers: You just want to argue.

[fol. 182] Mr. Roadifer: I am trying to get at the facts.

Judge Dewey: We are not interested in that there may have been some wrongful computation of some of the gasoline that was brought in. Are we not limited in our consideration of the case as to whether or not there was a wrongful and unconstitutional exactment of this particular tax? That is the dispute here.

Mr. Roadifer: No, I think the gist of our cause of action is the operation of this law as the officers are attempting and have been attempting to enforce it.

Judge Dewey: What difference does that make if it was not against you? Go ahead.

Mr. Roadifer: I want to say that they have injured our property rights by the acts directed against the Mona Motor

Oil Company. We will have to show something has been done to affect our right, as to specific acts. Let me say that I cannot get it clearly what I want, in one question. This tax is computed on these cars referred to in these reports at the close of each month for the month's importations.

Q. I will make that a question. This tax is computed on these cars referred to in these reports at the close of each month, for the month's importations?

A. That is right.

Q. Then to the extent that the MonaMotor Oil Company had gasoline on hand in storage at the close of the month, you would have then a computation of a tax on gasoline that had not at that time been disposed of. That is true, isn't it, not referring to payment, but to computation?

Mr. Powers: Objected to as incompetent, immaterial and irrelevant to any issue in the case, speculative, and calling for the incompetent conclusion of the witness.

Judge Dewey: I think it is very material, but I also think he has answered it. He says the report is on the 20th of the month, does he not?

Mr. Roadifer: Yes sir.

Judge Dewey: Then they figure it to that time and give them twenty days to pay it?

Mr. Roadifer: No, I think your Honor has mistaken the testimony.

[fol. 183] Judge Dewey: Then we better take the testimony, subject to the objections.

Q. Here is what I am trying to find out: It is reported on a blank furnished by the state, I call attention to a report filed by the MonaMotor Oil Company for May, 1931, and the date the report was filed was June 20th. It is for importations during the month of May. They have twenty days to prepare and file this report. This report includes certain cars of gasoline imported by the MonaMotor Oil Company during the month of May?

A. Yes sir.

Q. It is on these same cars, or some of them, that the auditor is claiming an additional tax by reason of the MonaMotor Oil Company using the wrong method of computing gallonage. That is true, is it not?

Mr. Powers: Objected to as asking for the conclusion of the witness.

Mr. Roadifer: I am merely asking Mr. Johnson how they made these reports, using that report as a basis.

The Court: Received subject to the objections.

A. This covers the entire importations during May. The tax is determined at the close of the business at the end of May, actually paid on or before the 20th of the following month.

It is figured as of the last day of May. The company has 20 days to pay the preceding month's tax on the importations, less exports, with 3 per cent deduction for evaporation and loss. From that report the only fact I know is they have imported so many cars of gasoline during May, and the gallonage, and the number of cars they have exported during the month of May, and the gallonage. (Trans. pp. 57 to 61, incl.)

Questions by Mr. Powers:

This report has under the first column, "Date unloaded," and has a column, "Station where unloaded." I do not ask of any oil dealer or distributor to report to me any gasoline except gasoline that has been unloaded. The report furnished on the 20th of the month is for the preceding month.

Q. Mr. Roadifer tried to get you to say that you demanded the tax upon all the gasoline received during the [fol. 184] preceding month, less sales outside of the state. I want to ask you if you have ever refused the Mona Motor Oil Company, or any other motor vehicle fuel tax payer, the right, if he asked it or wanted it, to deduct the gallonage he still had on hand at the end of the month?

A. We accept his sworn statement as correct.

The company never requested of me the privilege of deducting the amount or gallonage they had on hand at the end of the month, or any other motor vehicle fuel tax payer. If I had proceeded to make my reports on the theory, after deducting the gallonage they had on hand, it would mean the taking of an invoice at the end of each month, and no single dealer or distributor ever requested that under the present law. No question of that kind was ever raised by the company at all in any of these transactions.

Judge Dewey: When you say you did not make them report anything unless it was unloaded, is there anything

in this report in which the unloading was suggested in any way?

A. The first column provides for the unloading date, not the delivery date, but the unloading date. Sometimes they get a carload at the end of the month and unload it the next month.

Judge Dewey: It is really on unloaded gasoline you are basing the tax?

A. After it is unloaded, that is right. (Trans. p. 62.)

Questions by Mr. Roadifer:

Q. Do you keep a record of the exported gasoline in the same file that you keep a record of the imported gasoline?

A. It should be attached to make a part of the report, and it is unless it has been detached.

Further Cross-examination by Mr. Powers:

Q. One question I forgot to ask you in your cross-examination: Did the MonaMotor Oil Company ever report to you receipts of gasoline or motor vehicle fuel at Carter Lake, Iowa?

Mr. Kistle: Objected to for the reason that it is not shown the witness has any information on the subject.

(Received subject to the objection.)

A. I would have to verify that by reports, but I would say no.

[fol.185] I know that they did report some movements of gasoline and motor vehicle fuel from Carter Lake, Iowa, to the bulk plant at Council Bluffs, Iowa.

Q. And the fault you found with their reports was that they did not include all of the movement of motor vehicle fuel from Carter Lake to Council Bluffs?

Judge Scott: What do you mean by "exporting from Carter Lake to Council Bluffs?"

A. They have a bulk plant at Carter Lake, which is across the river in East Omaha, a part of Iowa, and they move it from there, through Nebraska, and into Iowa.

Judge Scott: You mean imported?

A. It is exported from there and imported from here.

Judge Scott: What you really mean in transferring from one point in Iowa to another point in Iowa they made an interstate shipment?

A. That is in Nebraska.

Judge Scott: There was neither exportation or importation?

A. It was importation into Iowa.

Judge Scott: It would be an importation of whatever would have to move from a foreign port to a local port; these were between two domestic ports?

A. It was a transfer; I will put it that way.

Judge Kenyon: A continuous shipment that went through Nebraska?

A. I presume so.

Mr. Powers, continuing:

Q. In fact, they treated the receipt of motor vehicle fuel at Carter Lake as a receipt in Iowa, and never was reported at your office?

A. I think the reports show that they never reported it.

Q. Reporting of the receipt of motor vehicle fuel in Iowa originally would be a movement of it from Carter Lake, Iowa, to Council Bluffs, Iowa?

A. I think the auditor's report shows that movement.

Q. I know it will show it.

[fol. 186] Judge Dewey: Mr. Johnson is trying to tell you all he knows is what is shown in the report in regard to these movements. Is not that the basis of it?

Mr. Powers: That report does not show anything about movements into Carter Lake?

A. Into Carter Lake?

Mr. Powers: Won't it be admitted that the MonaMotor Oil Company never reported to the Treasurer of the State of Iowa for the purpose of taxes, the receipt of motor vehicle fuel at Carter Lake, Iowa?

Mr. Kistle: The record of that matter will be in evidence.

Mr. Roadifer: We will have it all before we are through.

By Mr. Powers:

Q. Was there a time when the MonaMotor Oil Company requested of your office that they be permitted to treat, for the purpose of reporting, that Carter Lake was in Iowa? Change that—I mean in Nebraska?

A. Yes sir. They wished to set up a bulk plant called "Omaha Bulk" from which sales were made in Nebraska, or rather in Omaha.

Q. It was in reality in Iowa territory?

A. Yes, sir. They asked that permission and I granted it, and I would say that subsequent reports were made on that basis. (Trans. pp. 63, 64 and 65.)

By Mr. Roadifer:

Q. They also furnished you a report of the gasoline received at Carter Lake, which was later moved into Nebraska, upon which they paid the tax in Nebraska; that is true, isn't it?

Mr. Powers: Objected to as incompetent, immaterial and irrelevant.

R. E. Johnson examined by Mr. Roadifer:

Q. Mr. Johnson, if the reports were not filed by the 20th day of the month a penalty of 10 per cent was added, and the amount computed?

Judge Dewey: It shows that, doesn't it?

A. The report shows that. It is presumed they do follow the law, Mr. Roadifer.

Q. I don't know whether any presumptions are allowed [fol. 187] under this law or not. At about what time did you change the form of the report you used in the State of Iowa?

A. At the time the law was changed; it was effective July 4, 1927. Before that time, in the report, I required or allowed a deduction for the invoice of gasoline at the end of the month and also, prior to the change in the law, I required to be included in the report a report of the gasoline used or disposed of. After the law was changed, I then changed the form of report required of the company. Since the law was changed this form which we now have is the re- [fol. 188] port which has been used. I have no copies with me of the former report. I am not the State Treasurer now and have nothing to do with the administration of the law at this time. (Trans. pp. 66, 67, 68.)

J. J. Hess, called and sworn as a witness for the plaintiff, testified as follows:

I am one of the defendants in this action. I am employed by the state of Iowa and have been so employed in these cases since the 10th of April, 1932. In connection with this employment there are many other cases pending against other companies. There is a case against the Coryell Company or the L. L. Coryell Oil Company. I think they have been engaged in blending and compounding certain gasoline in Iowa.

Q. In that blending or compounding of gasoline, it was a product made from naphtha?

Mr. Powers: That is incompetent, immaterial and irrelevant to any issue in this case.

Mr. Roadifer: My thought is that the Coryell Company are blending gasoline in Iowa, and they are not paying any taxes thereon. It is in support of our theory of discrimination.

The Court: It is not discriminatory against you, is it?

Mr. Roadifer: Yes, your Honor, it is. They impose upon us a tax. If someone can blend gasoline in Iowa and not pay the tax upon it, that constitutes discrimination.

Judge Dewey: We will take it subject to the objections.

A. All I know is they shipped in quantities of naphtha, and suit is pending against them now for the tax they failed to pay on it, Mr. Roadifer.

Q. From your investigation of the facts, the Coryell Company have failed to pay to the state of Iowa certain taxes based upon gasoline blended out of naphtha?

Judge Dewey: What difference does it make? You are trying to show the government is not collecting taxes on it?

Mr. Roadifer: Yes sir.

[fol. 189] Judge Dewey: Ask him directly if that is true.

The Coryell Company have failed to pay certain taxes, whether it is gasoline blended out of naphtha I am not sure. They shipped in a large quantity of naphtha, and an audit disclosed $40,000.00 they have evaded, and we have sued them for it.

My understanding of the audit is that the tax evasion claimed as against the Coryell Oil Company is in part failure to pay taxes on gasoline or motor vehicle fuel which they

have blended in Iowa, and in part on motor vehicle fuel upon which they have wholly failed to make a report and pay. My understanding of the audit is that a part of it is based on the blending of naphtha.

Cross examination.

By Mr. Powers:

Suit is now pending against the Coryell Company for the tax on that blended product. (Trans. pp. 68, 69, 70.)

Q. During the time you have had the responsibility of the enforcement of this matter, vehicle fuel license fees, has there been any discrimination between motor vehicle fuel blended or compounded in Iowa, and motor vehicle fuel received in Iowa from outside of the state?

Mr. Roadifer: Objected to as incompetent, immaterial and irrelevant, and asking for the conclusion and opinion of the witness, and not a statement of fact.

Judge Dewey: Overruled. I think you called him as an expert?

A. We have attempted to collect everything, and from everyone who owed the state a tax, whether shipped in from outside, or whether it was blended and manufactured here.

Q. Then it has not been the policy, as I understand it, of the state officers to permit the blending or compounding of motor vehicle fuel, without exacting the tax from the use or other disposal of that fuel?

A. My theory of it has always been——

Judge Dewey: No, no. Has it been the policy?

(Question is read to the witness.)

A. All I know is my own policy, and what I have been directed to do by the other officers.

[fol. 190] Q. You have had, since April, substantial charge of these cases?

A. I think I have. (Trans. p. 71.)

The men who blended or compounded motor vehicle fuel in the state and sold it and used it without paying the tax I sue just the same as the men who received from outside of the state motor vehicle fuel and used it or sold it within the state. I never made any discrimination.

Question by Mr. Roadifer:

Some part of the evasion of tax which I claim was based on gasoline that was blended or compounded in Iowa has applied to other companies, and also has applied to the MonaMotor Company. They have all been treated alike. (Trans. p. 72.)

L. J. WEGMAN, called and sworn as a witness for the plaintiff, testified as follows:

Direct examination.

By Mr. Roadifer:

I am State Treasurer of Iowa, and I am in charge of the collection of gasoline taxes in the state of Iowa. I am still using the same form of report as was being used at the time I entered my office, and I am still collecting taxes based on the form of report formerly in use. (Trans. pp. 72, 73.)

Q. You are continuing to assert as against the Mona-Motor Oil Company the right to have them file with you a report in that form, are you?

Mr. Powers: Objected to as calling for the incompetent conclusion of the witness, by the language "continuing to assert."

Judge Dewey: Sustained.

Q. You are at this time the plaintiff in an action against the MonaMotor Oil Company, based on a claim for taxes, on the figures in this audit, aren't you?

Judge Dewey: Isn't that the case that is pending?

Mr. Powers: It is.

Judge Dewey: Sustained by my own objection.

We prepared a report showing the amount collected in gasoline taxes in the year 1932, but I cannot give it from memory. I could get the figure from my office. Refreshing my recollection from the published list, I would say that was substantially correct, and that gives the years 1931 [fol. 191] and 1932.

Judge Dewey: That is the refund?

A. No, the tax collected. For 1931 it shows collected the sum of $12,365,168.45. For 1932, $10,795,088.42.

Q. (continued) During those two years that amount has been collected as based on this form of report similar to the one used for reports of the Mona Motor Oil Company, isn't it?

A. That happened previous to my term of office, but I presume it was. I couldn't tell you. (Trans. p. 74.)

Cross-examination.

By Mr. Powers:

This is the form of report I found in the office when I took charge. A new form is now under consideration and will be prepared and ready as soon as we determine what the present state legislature may do in the way of legislation on this subject.

Judge Kenyon: Is there any way of determining that?

A. I hardly think so.

I have not, during the time I have administered the law, ever refused any motor vehicle license fee tax payer the right to deduct in his report the amount of motor vehicle fuel on hand at the end of the month.

Q. Would you, in the administration of that law, refuse that right to any motor vehicle fuel tax payer who claimed the right?

Mr. Roadifer: Objected to as incompetent, immaterial, irrelevent, not cross examination.

Judge Dewey: Received subject to the objections.

A. No sir.

Redirect examination.

By Mr. Roadifer:

Q. You have not notified any of the distributors of motor vehicle fuel to that effect, have you?

Mr. Powers: Objected to as immaterial.

Judge Dewey: We have got into it. If is not helping very much.

Mr. Roadifer: No, I do not think so.

A. I have not had any request on that, Mr. Roadifer. (Trans. pp. 72 to 75, incl.)

[fol. 192] C. E. VOTRIAN, called and sworn as a witness for the plaintiff, direct examination conducted by Mr. Roadifer, testified as follows:

I am treasurer of the Barnsdall Refineries, Incorporated, of Tulsa, Oklahoma. I have made an examination of the audit prepared by Wolf & Company of the books of the MonaMotor Oil Company with reference to the claim that is being asserted against that company for taxes. I have also made some independent examination of the books and records of the MonaMotor Oil Company with reference to the facts contained in that audit.

Q. Calling attention to Exhibit 18, I will ask you to state whether or not the figures used in Exhibit 18 correspond substantially with the figures used in this audit?

Mr. Powers: Objected to as incompetent, immaterial and irrelevant.

Mr. Roadifer: It is merely preliminary.

Mr. Powers: We are not here for the purpose of trying the question as to what amount or how much gas tax these people may owe.

Mr. Roadifer: It is not for that purpose at all.

Court: It is a résumé.

Mr. Roadifer: Yes sir, and it corresponds with the figures of the audit.

Judge Dewey: Ask him directly.

A. Substantially the same figures as were used in the audit of Wolf & Company.

Refreshing my recollection from Exhibit 18, there have been reported to the state of Iowa, from December of 1929, to April of 1932, inclusive, 10,341,864 gallons. That would be Column 1. Column 1 is the net gallons reported according to the tax returns. (Trans. pp. 75, 76.)

Q. That figure is 10,856,774?

A. No, that is the number of cars reported, with the gallons changed to invoice gallons.

Column 1 of Exhibit 18 shows the number of cars of gasoline reported to the state of Iowa, computed on invoice gal- [fol. 193] lons. Of that amount 1,821,286 gallons were included in these reports of gasoline that was shipped by tank car from the refinery in Iowa to other points in Iowa. The number of gallons that were imported into Iowa is 9,035,488 gallons. There was certain gasoline received at

the refinery at Carter Lake that was not included in the reports of imported gasoline to the state of Iowa. That gasoline was reported right direct to the Treasurer of the State of Nebraska. The total number of gallons of gasoline received at the refinery that was not reported in Iowa was 704,589 gallons. Further, into the Omaha bulk plants, which joined the refinery, 1,313,575 gallons. There are two separate units at Carter Lake. One of them is designated as the "Refinery," and the other is the "Omaha Bulk Plant," which are large storage plants located at that place and adjoining the refinery tanks and all located on the same plot of ground, and for convenience they are referred to separately in handling gasoline. Column 6 of this exhibit shows receipts in the state of Iowa in tank cars at bulk plants other than the bulk plant known as the Omaha bulk plant. It shows certain gasoline that had not been reported to Iowa. In addition to that there is certain gasoline that was moved from Nebraska by truck to Iowa, that had been reported. During this period there were 13,315 gallons of that sort of gasoline. (Trans. pp. 77, 78.)

Q. Now, give the total number of gallons that was actually imported into Iowa, during this period?

Judge Dewey: Are you reading from figures on the résumé? Can't you ask him for the figures?

Mr. Roadifer: I thought it might be helpful to ask for a little explanation of what they were.

Judge Dewey: We cannot remember those figures. When you pass 50 we are lost.

Mr. Roadifer: What I am trying to do is to get at a little explanation of what each one of these columns refers to.

Judge Dewey: Then ask him, can you not? I think you are wasting time.

Mr. Roadifer: I do not think I am. I am trying to cut it down as brief as possible. (Trans. p. 79.)

[fol. 194] Of this gasoline that was shown as total imported gasoline, a part of that gasoline that had been imported into Iowa moved out of Iowa to other states and part of that moved to bulk plants in Nebraska, and is shown by this report. Of this imported gasoline a part of it was sold to jobbers or handled as jobber gasoline in other states.

Mr. Powers: That is all objected to as incompetent, immaterial, irrelevant to any issue in this case.

Received subject to the objections.

Q. That was handled by truck direct to consumers in other states?

A. It did, and is shown in this report.

A large portion of this gasoline that was stored at the Omaha bulk plant was moved into Nebraska, in excess of 3,000,000 gallons. There was also certain truck transfers from Iowa into Nebraska of this gasoline which I have included as imported into Iowa, other than from the Omaha bulk plant. Of this gasoline that was imported, the total number of gallons that were in fact during this period of time exported from Iowa was 5,068,624. The net gallons of gasoline that were actually imported into Iowa and stayed in Iowa was 6,046,290. I did not make a deduction out of the figure I gave you of 3% for evaporation and loss. I made that deduction from that figure, and the net amount would be 3% less than that, and the net amount I arrived at as imported gasoline which remained in Iowa was 5,864,356 gallons. During this period of time the entire amount of gasoline as per the tax reports which the MonaMotor Oil Company had reported was 10,341,864 gallons.

This exhibit also shows the difference between what they had reported and the actual gallons of imported gasoline remaining in Iowa, and that amounts to in excess of 4,000,000 gallons they had reported, more than was imported into Iowa. As a basis for that computation I have not used the figures furnished by Wolf & Company; those are figures compiled by our own auditors, and compared with Wolf & Company's figures.

Mr. Roadifer: We offer in evidence Exhibit 18.

Mr. Powers: Objected to as incompetent, immaterial and irrelevant to any issue in the case.

[fol. 195] The Court: Received subject to the objections.

As to these figures being correct, as shown by the books and records of the MonaMotor Oil Company and tax reports as filed by them, as far as I can tell they agree with the books of the MonaMotor Oil Company.

By Judge Dewey:

Q. These oil companies are interlocking. What is your connection with the MonaMotor Company?

A. I am treasurer of the Barnsdall Refineries, Incorporated, of Tulsa, Oklahoma. I can explain that a little further. The Barnsdall Corporation is the holding company, and they have various operating companies, numerous ones. The Barnsdall Refineries, Incorporated, is one of the big operating companies and operates refineries, crude oil pipe lines, and market wholesale.

Q. Is this MonaMotor Company one of the subsidiaries?

A. A subsidiary of the Barnsdall corporation.

Q. The Barnsdall corporation is a subsidiary?

A. No, the Barnsdall is strictly a holding company. The MonaMotor is subsidiary to the Barnsdall corporation, as well as the Barnsdall Refineries, Incorporated.

Q. By whom is the stock of the MonaMotor Company owned?

A. The Barnsdall corporation.

Judge Dewey: What is the purpose of introducing this evidence, Mr. Roadifer? What is your idea?

Mr. Roadifer: My thought is to show the extent to which they have enforced this tax against the MonaMotor Oil Company. In other words, they not only have been enforcing the tax as against the imported gasoline, but to the extent of the difference shown in the report, have imposed it on gasoline that has been manufactred in Iowa. That is the conclusion we have reached.

Judge Dewey: You have paid it, and it is all there.

Mr. Roadifer: That is what they have done and is evidence of what they will continue to do.

The Court: If they are exacting too much, you ought to stop it and let them sue you.

[fol. 196] Mr. Roadifer: We are trying to interfere with their lawsuit. It is to stop a condition that has been existing, and which we say will continue, unless this injunction is granted. Without showing what they have done we probably would not have any evidence to support our theory of what they are continuing to do. The lawsuit is based, not only on the unconstitutionality of the law, but on the acts of the state officers in attempting to make the law effective in an unconstitutional manner.

Judge Dewey: Are we not only interested in the amount you are refusing to pay, and they say you ought to pay, as to whether that is illegal or not?

Mr. Roadifer: It is only an incident to our right to an injunction.

Judge Dewey: You think that it is an incident?

Mr. Roadifer: Yes sir.

The Court: If you owe it, it don't make any difference.

Mr. Roadifer: If we owe it it is because the law is constitutional. If the law is unconstitutional——

Judge Dewey: This does not have anything to do with the constitutionality of the law.

Mr. Roadifer: I think so.

Judge Dewey: As to whether they exact more than they should?

Mr. Roadifer: No, it is the fact that they have exacted it as against imports as such. We have to show they are doing those acts. That is the purpose of this computation, Exhibit 18, as I view it.

Judge Dewey: All right, we will see what it is.

Cross-examination.

By Mr. Powers:

The difference between the amount of the gallonage I reported to Iowa, and the result obtained by subtracting my exports from Iowa from my imports into Iowa is due to the fact I report to the state of Iowa motor vehicle fuel produced at Carter Lake. So that I have heretofore reported to the state of Iowa motor vehicle fuel oil, or motor vehicle fuel rather, to the extent of something in excess of 4,000,000 gallons that was produced at Carter Lake. (Trans. pp. 79 to 84, incl.)

[fol. 197] Q. And you interpret the law to mean that the motor vehicle fuel produced by you at Carter Lake, Iowa, was subject to the tax the same as motor vehicle fuel imported into Iowa, from outside of the state?

A. I cannot answer that question. I didn't report anything for the MonaMotor Oil Company.

In the examination of my reports that the company has heretofore made, up until the time this trouble arose, no distinction was made between the gasoline reported, or

rather imported into Iowa, and gasoline that was produced at Carter Lake, Iowa.

Q. The reporting of the motor vehicle fuel produced at Carter Lake was made when the fuel moved from Carter Lake, Iowa, to some other point in Iowa?

A. I cannot answer that question, because I had nothing to do with the reporting. I merely made a check of the reports as I found them.

Q. You do not mean to give the court the impression that your company reported to Iowa the gasoline produced at Carter Lake?

A. I cannot answer that question. I do not know.

Q. Isn't it a fact that in your report to Iowa you reported or state it this way: Isn't it a fact that they never reported to Iowa anything except motor vehicle fuel that moved from the refinery to points in Iowa, for consumption in Iowa?

Mr. Kistle: Objected to as asking for the conclusion of the witness.

The Court: Received subject to the objection.

A. I don't know that I understand the question. That they did not report anything to Iowa——

Q. It was the practice of your company, or the Mona Motor Oil Company, to report to the Treasurer of the State of Iowa, gasoline or motor vehicle fuel produced at Carter Lake, that moved to Council Bluffs or some other point in Iowa, for consumption in Iowa?

A. That moved, but it was not all consumed in Iowa.

Q. That is, the gasoline or the motor vehicle fuel that was reported, those movements?

[fol. 198] A. They reported it as moved.

Q. You say you made up your figures based on the report of Wolf & Company?

A. No sir, I did not say that.

Judge Kenyon: How do you know it was consumed in Iowa? Do your reports show?

A. No, my report does not show. I do not know whether it was or whether it was not consumed in Iowa.

Judge Kenyon: I understood you to say it was not.

A. No sir, they reported it as moved.

Judge Kenyon: You do not know whether it was consumed in Iowa or not?

A. I do not know whether it was consumed.

Mr. Powers, continuing:

Q. You mean the MonaMotor Oil Company reported they took credit for all gasoline that was sold from Iowa, to points outside of the state?

A. They attempted to. I am familiar with the forms of the report. (Trans. pp. 84, 85, 86.)

Q. For illustration, here is a report for July, 1932, and will you look at that and tell us whether or not, in that report, the MonaMotor Oil Company does not take credit for all its gasoline sold for consumption outside of the state, for delivery outside of the state?

A. They took credit for 141,990 gallons.

Q. Isn't it a fact that attached to the report is detailed statement of the sales and shipments that make up that gallonage?

Mr. Roadifer: I do not find that on any of them.

A. It is my understanding they are supposed to give that.

Q. And the MonaMotor Company took that credit?

A. That is right.

Q. I will hand you another one for June, 1932. You will find attached here on the first sheet a long list of shipments. I will ask you to state whether or not that is not a list of the gasoline which the MonaMotor Company claimed [fol. 199] that they sold in Iowa, for use and used outside of the state, and for which they claimed and received credit in making their report?

A. The figures do not seem to agree on here. They show a total of 157,000 here, and show a deduction of 165,000 here.

Judge Dewey: You are only interested in showing this particular report, that they did take credit. I think you have gone far enough. As long as the record shows it, there is no use in asking him if it shows it. He has not said otherwise. He does not claim they did not take credit.

Mr. Powers: There was a pretty strong inference upon his direct examination.

Mr. Votrian: I did not mean to so infer at all.

Q. You have seen this report that was given?

A. Yes sir.

Q. You are an accountant?

A. Yes sir.

Q. You know from a comparison of the report, and an examination of the books of the MonaMotor Company that some forty carloads of gasoline moved from Carter Lake to Council Bluffs, in your report to the Treasurer of State?

A. I don't really remember the number. There were some cars.

Q. And some of those cars were shipped as lubricating oil?

A. I think some of them were. They were, at least, shipped as other products than gasoline. (Trans. pp. 87, 88.)

Redirect examination.

By Mr. Roadifer:

Referring to the report for the month of June, which reports the gasoline imported, there is included in that report a certain number of gallons deducted for gasoline sold outside of the state of Iowa during the month. It would be very difficult to identify that as the gasoline which is included in this report. No doubt some of it is.

We had a refinery and bulk plant at Carter Lake. We import certain cars of gasoline into the refinery, and we also manufacture certain gasoline at the refinery. From the refinery we pump a part of the manufactured gasoline into our bulk plant at Carter Lake. In addition to the gaso- [fol. 200] line that goes into the bulk plant at Carter Lake we also pump certain imported gasoline, so that it becomes all mixed together. Then from that bulk plant at Carter Lake, and from the refinery, certain shipments are made direct from the refinery at Carter Lake to other points in the state of Iowa, and also points in Nebraska. The shipments from the refinery and receipts from outside of the state are all mixed up. There was certain gasoline moved by truck from Omaha bulk plant to the Council Bluffs bulk

plant. After that gasoline gets to the Council Bluffs bulk plant it is also there mixed with gasoline that might be imported direct to the Council Bluffs plant from Oklahoma, and after that gasoline gets mixed up at Council Bluffs we then use that as a distributing point to other bulk stations in Iowa and to other states.

I do not recall the storage capacity of the Carter Lake bulk plant; they have a large capacity over there. Of this gasoline, both imported and compounded and blended gasoline that goes into the Council Bluffs plant and shipped to bulk plants in Iowa is a part of the gasoline moved from those bulk plants into other states. I do not recollect any tank car movements out of Council Bluffs. There are truck movements out of Council Bluffs. Tank car shipments as I recollect it, have gone out of the refinery and not out of the bulk plants. After the gasoline goes into the bulk plant, it goes into the Council Bluffs bulk plant from the Omaha refinery, the gasoline that is then in the Council Bluffs bulk plant is both refined gasoline and imported gasoline mixed up together. Under the system that has been used some of the cars were reported to the state of Iowa as imported gasoline the gasoline that is moved from Carter Lake, Iowa, to the Council Bluffs bulk plant, and some were not. After that goes into the Council Bluffs bulk plant the movement out of there is by truck. There is no way to determine whether the manufactured gasoline as distinguished from imported gasoline has been moved out of the Council Bluffs plant to any designated plant; it is so intermingled that it cannot be identified at all. (Trans. pp. 88 to 92, incl.)

[fol. 201] Ray E. Johnson, recalled as a witness for the plaintiff, testified as follows upon direct examination by Mr. Roadifer:

Q. Mr. Johnson, I notice on these reports that have been furnished, you refer to items ib Form #15, with reference to gasoline sold and delivered outside of the state of Iowa. I do not find Form #15 attached to any month's report. You do not have any separate file for them?

A. No sir. We had an agreement in Nebraska they would furnish us a list of the gasoline that the MonaMofor people

paid on, which we verified by the amount they deducted from our report. They had a good many small places in Nebraska.

Q. I notice on this report for August, 1932, this form #15 is attached; on many of these other reports there is no Form #15 attached?

A. Back to the time the suit was started I would say there was not any #15.

Q. There would be no Form 15 attached prior to the time the suit was started?

A. Not from the MonaMotor Company. (Trans., pp. 92, 93.)

I arrived at the gallonage sold and delivered outside of the state of Iowa for which credit was given, from the sworn report, verified by the Nebraska department, as to the amount they paid on it as being imported from Iowa. All of the deduction that I allowed from the Iowa report was not based entirely on the report that they made to the state of Nebraska; we verified it with Nebraska. We required from the MonaMotor people a report to show the movement of the gasoline from Iowa to outside of the state of Iowa only as a lump sum, only as shown by the verified report. I verified that by the Nebraska report only, that is, before the time this suit was started.

Q. You required the MonaMotor Company to report to you the same gasoline that was reported to Nebraska, did you?

A. They are approximately about the same. They may claim the deduction of so many gallons, and they paid the tax in Nebraska for the same month.

I was not requiring a report of gasoline into the refinery [fol. 202] and Omaha bulk as imported into Iowa, we waived that requirement. We arrived at the gallons of gasoline that the company shipped to South Dakota by the same method, by the gross report from the South Dakota department at Pierre. (Trans. pp. 93, 94.)

Q. I notice here in the auditor's report, upon which you base your demand, a schedule of cars in which is shown cars shipped to points outside of the state of Iowa, in which certain credits are given to the MonaMotor Oil Company, because they failed to claim enough gallonage credit. Are you familiar with that part of the audit?

A. No sir.

Q. The MonaMotor Oil Company were entitled to more credit than they were taking?

A. That would develop, as I understand it.

Q. In a general way you know that deduction was made in arriving at the amount you claimed as due from the MonaMotor Company; that is true?

A. The report would show that.

Q. Have you anything in your office that will show that any credit was ever given to the MonaMotor Oil Company on those cars?

A. I don't know as I can identify the cars or not. They might have included them in their total deduction for that month.

Q. Do you not have in your office any detailed statement of the cars of gasoline that the MonaMotor Company shipped to points outside of the state of Iowa, during this period of time?

A. No sir, they are not required to make that report.

Q. Can you explain to the court with what you made comparisons to determine?

A. I did not make the comparison.

Q. I wondered if you were personally familiar?

A. Mr. Peterson, of the Wolf Company, made the audit.

Cross-examination waived. (Trans. pp. 94, 95.)

Mr. Roadifer: We have introduced either two or three copies of the former report that was required before the [fol. 203] change in the law. Mr. Wegman has said he would get us a copy of the MonaMotor's report before the statute was changed, and I think with that one matter, we are through.

Judge Dewey: What statutory change do you refer to?

Mr. Roadifer: When they changed the law, the former law requiring a report of gasoline imported, used or disposed of.

Judge Dewey: The one cent additional tax?

Mr. Roadifer: It is about the time they enacted the one cent tax, additionally, but prior to that time the former statute required a report of gasoline—not only the imported gasoline, but gasoline used and disposed of, and they repealed that statute and re-enacted it without the words, "Used and disposed of." I am advised prior to that time the reports that they required showed gasoline used and

disposed of, and they took into consideration the invoiced gallonage written at the end of the month. I want to show the change in that law.

Judge Dewey: There is no objection to your offering it out of order, if material.

Mr. Roadifer: With that understanding, we rest. (Trans. pp. 95, 96.)

J. J. Hess *is* thereupon recalled, for the defendants, and on direct examination by Mr. Powers testified as follows:

I live at Council Bluffs, and have been in the practice of law there thirty-four years. My first connection with this litigation between the state and the Mona Motor Company was in April, 1932. Mr. Meade and Mr. O'Neill came to my office and asked me to advise them what to do in connection with some apparent discrepancies they found in the Mona Motor records, and I advised them. They went down to the office of the Mona Motor Oil Company and returned to my office the next day with a number of invoices and shipping records connected with the movements of gasoline. I have those records with me. We found these records. There would be an original bill of lading of gasoline. That would be followed by a loading report—we haven't all the records complete, but I will state an example where we had them all complete, showing that gasoline was [fol. 204] loaded into a one numbered car. It would be shipped according to the railroad bill of lading as petroleum lubricating oil, and would be unloaded as gasoline into the gasoline tanks at Council Bluffs, and we found about forty cars that were so handled. These shipments originated at the refinery at East Omaha, and possibly a few out of what was known as Omaha bulk, but I think they were largely refinery shipments. The shipments were to Council Bluffs bulk in every instance.

Q. Did you find changes in the invoices?

Mr. Roadifer: Objected to as asking for the conclusion of the witness whether they were changed.

Judge Dewey: What do you refer to?

Mr. Powers: I asked for the reports and he has produced them.

Received subject to the objections.

Judge Kenyon: Whom do you claim made the changes?

A. The changes were made by the employes. The invoices would be originally written "gasoline," and the letters "oline" were erased and the word "oil" written in place of it. It was shipped as gas oil and billed as petroleum lubricating oil, and loaded as gasoline and unloaded as gasoline.

Following this discovery we went to the office of the State Treasurer, the reports that had been made by the company, and checked back the entire records as far as we were able to, and discovered that these miss-billed cars, where the changes had been made in the records, had not been reported to the state. As soon as we had checked these out so that we knew the cars had not been reported nor the tax paid, we filed these charges for failure to make a complete report. It was an incomplete and false report. There were indictments returned at the September Term of Court in Council Bluffs.

Q. What happened to those indictments?

Mr. Kistle: Objected to as not the best evidence. We have already certified copies in evidence.

Judge Dewey: Answer.

A. There were pleas of guilty by H. A. Searle, President; H. A. Searle, Jr., General Manager; E. L. Walters, Traffic Manager in five, and fines of $3,500.00 were paid. H. A. Searle, Sr., the president, plead guilty in one other case, [fol. 205] and on these pleas being entered, and the fines paid, the balance of the charges were dismissed, and the whole record cleaned up.

Q. What other cases now, criminal or civil, are pending against the MonaMotor Oil Company in behalf of the state, excepting the one case where the Treasurer of State is asking for a money judgment for taxes due?

Mr. Kistle: Objected to as not the best evidence. The record shows there were nine of them.

A. That is all.

About the 8th or 9th of April, 1933, Mr. Fletcher, the attorney general, and Mr. Blake, came to my office and we discussed this matter, and telephoned down to the office of the MonaMotor Company with reference to these dis-

coveries, and these irregularities which we had found, and we suggested they had better come up and talk things over with us, and Mr. Edinger, Vice-President of the Barnsdall Company, who had been elected a Vice-President of the Mona Motor Company, and Mr. Frawley, I think another Vice-President, and Mr. Fuller, who had been elected general manager, came to my office. There had previously been a talk between a representative of the Barnsdall Company, and Mr. Johnson, and Mr. Bass, State Treasurer of Nebraska, with reference to an audit, and the Barnsdall Company had tendered their auditors to make this audit. In an interview we had I told them we would not accept an audit that was made by their own auditors. I told them we would only be bound by an audit that was made by someone not interested with them. The matter was talked over at length, and the matter of closing their business was suggested by either Mr. Fletcher or Mr. Blake, and then they said we might select an auditor who was a reputable auditor, a certified accountant, and have an audit made, and as soon as it was determined how much they owed from the audit they would pay it. (Trans. pp. 96 to 100, incl.)

The name of the auditor was not suggested at that time, and was never suggested to them before the audit was actually made. The audit was begun a few days later. I do not know just how long, but only a few days. Mr. [fol. 206] Johnson employed Wolf & Company, and Mr. Petersen came to my office with the letter that has been offered in evidence here, and I made some suggestions to him about the audit, and he and his assistants began work at once. (Trans. p. 101.)

After the audit was completed, as I remember it, Mr. Johnson told me to come down to his office, and I came over here to Des Moines, and we went over this audit, and in either this first interview or at a later interview I had with Mr. Wright, representing the Mona Motor Company or the Barnsdall Company, and I had told them when the audit was completed we would supply them with a copy. I furnished them with a copy of the audit when it was completed. Mr. Wright and Mr. Kistle said they would have to have their auditors verify the figures of the Wolf audit. I think they wrote Mr. Johnson about that matter, and they were given time. I spoke to Mr. Wright about

it several times, urging him to hurry the matter up so that we could get it disposed of. Mr. Johnson was urging that the matter be gotten out of the way, and finally, about the early part of October, Mr. Petersen in the meanwhile getting in touch with the auditors of the Barnsdall Company, I think Mr. Votrian, and they had determined that the gallonage of the Wolf report was accurate, with the exception of two cars that they were unable to place or trace or something, and I came down to Des Moines and talked with Mr. Johnson about it. He said, "If we are that near together, you go and tell Mr. Wright if they will pay this amount we will deduct the two cars and eliminate the only matters that are questionable." So I went and saw Mr. Wright the next morning and talked with him, and I think perhaps with Mr. Kistle, and they informed me Mr. Reeser would be in town in the afternoon, and the matter would be submitted to him. I did nothing then; they were to let me know in the afternoon what Mr. Reeser said about paying. Mr. Wright phoned me while I was in court that afternoon. I did not get the message until late in the afternoon, at which time I called Mr. Kistle, or Mr. Wright's office, and Mr. Kistle was there, and he said then that they would meet with Mr. Fletcher and Mr. Johnson and myself, and show us they did not owe us anything, or something of that kind. The next morn-
[fol. 207] ing I reported that to Mr. Johnson. Then he directed me to start this suit. That was before the cancellation of the license. I had previously been over these matters with Mr. Johnson so he knew just what the record was. (Trans. pp. 101, 102.)

Cross-examination.

By Mr. Kistle:

I have had the MonaMotor records in my possession all the time since April, 1932. I don't recall telling you I had returned them. I told you or Mr. Wright we would hold them until this matter was all finished up, that I would keep them in my vault where they would be assessible to you if you wanted them for anything; but we would not give them up until the whole matter was settled. I don't know whether I talked with you or with Mr. Wright.

From these papers I have produced I can tell only what the papers show as to what was in those tank cars. I never saw the tank cars.

Q. All right then, as far as what was in the tank cars is concerned, that is pure hearsay, isn't it?

Mr. Powers: It is immaterial, irrelevant.

The Court: Sustained.

I have forgotten when I first found out that the Mona Motor Oil Company was claiming that this entire Iowa statute was unconstitutional, and for that reason they did not owe any tax. Just when I could not tell you, that you were claiming this law was unconstitutional. (Trans. p. 103.)

Q. Now, you were talking about the time when Mr. Blake and Mr. John Fletcher and yourself called up these gentlemen from the MonaMotor office. You know when you did that that the MonaMotor Company was represented by the law firm of Wright & Baldwin, didn't you?

A. We telephoned the office of the MonaMotor Company, and when they appeared we supposed, of course, if they wanted their lawyers they could get them. They came there without them.

Q. No, you knew at that time that the firm of Wright & Baldwin represented the MonaMotor Oil Company, didn't you?

Mr. Powers: Objected to as immaterial and irrelevant to any issue in the case.

[fol. 208] Received subject to the objections.

A. I don't know whether I knew it at the time or not. You had previously represented the MonaMotor people. I don't know when you made the change.

I knew that the firm of Wright & Baldwin represented the MonaMotor Company from the very first I started in. Mr. Fletcher and Mr. Blake and yourself and myself were at my office, and Attorney General Fletcher told them that the matters that had been discovered, there was evidence upon which he could close the plant for these fraudulent returns. We told them we would not accept the audit made by their auditors, that we were going to have auditors representing the state of Iowa, and paid by the state of Iowa, to make this audit. I told them that myself. I was insisting for the

state treasurer of the state of Iowa for the right to audit the books of the Mona Motor Oil Company under these statutes, and they were willing that it should be done. This paper that is in evidence here, whereby Ray Johnson requested that the auditors of Wolf & Company be permitted to audit the books of the Mona Motor Oil Company, I did not see until Mr. Petersen brought it to my office on the day he came to make the audit. I was not in your office the morning you had Mr. Petersen up there. I don't think you told me that it was the position of the Mona Motor Oil Company that gasoline refined in Iowa was not imported gasoline at the time I turned the audit over, but shortly afterwards.

Q. And that these cars that came over switched from the refinery to the Council Bluffs plant was refined gasoline, and not imported gasoline?

A. You told me your theory of the law was that gasoline they manufactured in the state of Iowa was not taxable.

Q. Absolutely.

A. You remember I said if they sold it and collected the state tax on it, that belonged to the state, and not to the Mona Motor Oil Company. That was my theory.

Q. I told you we had not done that.

A. And I told you you had.

[fol. 209] Q. So we did dispute that question.

Mr. Powers: Now we stipulated you did.

Q. No, we have not. You knew we were requesting a meeting with you and Mr. Johnson and Mr. Fletcher to attempt to demonstrate and show you that this gasoline that the audit showed was moved from Carter Lake, Iowa, to Council Bluffs, Iowa, was refined gasoline and not imported gasoline?

A. There was only once you spoke of a meeting, and that was when I went to you with Mr. Johnson's settlement proposition.

Q. Then the next day you filed the petition?

A. The next day the suit was started.

Q. You told me you would try to arrange such a meeting?

A. I told you I would call up Mr. Johnson and see what he said about it.

Q. And the next was the filing of the petition?

A. That is right.

Q. And you knew, during July of 1932, that the MonaMotor Oil Company was claiming that the statute was unconstitutional, and had received a copy of the brief of the MonaMotor Oil Company, with reference to it?

A. That was in June.

Q. That was in June, 1932. (Trans. pp. 104 to 107, incl.)

L. J. WEGMAN, recalled as a witness for the defendants, examined in chief by Mr. Powers, testified as follows:

I know about this suit at Council Bluffs, brought in behalf of the state against the MonaMotor Oil Company by the State Treasurer, to collect some $27,000 that the state claims is owing it in motor vehicle license fees. It is my intention to prosecute that suit to final judgment, one way or the other, at the present time. Outside of that suit at law I do not intend to bring any other action or proceeding against the MonaMotor Oil Company until this suit is adjudicated by the courts.

Cross-examination.

By Mr. Kistler:

Not until the suit pending at Council Bluffs to recover some $27,000 is adjudicated in the courts.

[fol. 210] A. To get the matter clear, can I ask for a point of information? I understand this action is merely to determine whether the state is within its rights in prosecuting this case.

Q. I think so. Anyway we did not initiate this action. I asked you about any proceeding you might contemplate against the MonaMotor Oil Company.

A. I have not in mind anything. I would like to see this case determined upon its merits. I have not anything in mind in the way of a prosecution against the MonaMotor Oil Company at this time, or any other time in the future.

Q. You have not reinstated the license which Ray E. Johnson cancelled, have you?

A. I have not. As I understand it, they are operating the same regardless of the cancellation.

Mr. Powers: There has been no attempt to interfere with their business.

A. None whatever.

Q. Don't you intend to take any proceedings and collect any license fees or taxes from the MonaMotor Oil Company for the month of September, 1932?

Mr. Powers: He did not say that.

Q. I am asking him.

A. I am awaiting the adjudication of the present pending case.

Q. You are just holding it in abeyance, then. Do you intend ever to institute any action to recover against the MonaMotor Oil Company any license fees for the month of October, 1932?

A. What does the present action cover, may I be informed?

Q. I thought you knew. Don't you know?

A. I mean what months this present pending action at Council Bluffs covers.

Q. Don't you know what it covers?

A. I have not looked it up.

Q. Do you know that the MonaMotor Oil Company has not made a report for the month of September, 1932?

A. I couldn't tell you without looking up the records.

Q. That is a fact, isn't it?

A. All right.

[fol. 211] Q. And the suit at Council Bluffs does not apply to that month? Now, do you tell the court that you don't intend to institute any proceedings against the MonaMotor Oil Company looking towards the collection of license fees on motor vehicle fuel for the month of September, 1932?

A. There will be no action instituted against the MonaMotor Oil Company other than that pending, until it is determined what the decision is in that case.

Q. In the event that action does not succeed you will start another action against the MonaMotor Oil Company; is that right?

A. That will be determined by the advice of the attorney general of Iowa.

Q. What you do will be determined by the advice of the attorney general?

A. Yes sir.

Q. You cannot speak now as to what that determination will be?

A. I have not made any inquiries, or investigated.

Q. You expect to do with respect to these statutes in the enforcement of the gasoline tax law what the attorney general tells you your duty is with reference thereto?

A. I will be guided in my conduct on the authorities.

Mr. Kistle: With the appearance of these three items of testimony, and the understanding they may be marked Exhibit 19 and considered in the evidence, and as offered in evidence, we are ready to close the case.

Mr. Powers: The defendants rest.

Plaintiff rests.

Defendants rest.

Evidence closed.

[fol. 212] The plaintiff offered in evidence as an unnumbered exhibit nine (9) preliminary informations filed in the Municipal Court of Council Bluffs, Iowa, against the MonaMotor Oil Company charging the MonaMotor Oil Company and its officers with making false and fraudulent reports. Each information related to the report for a different month—the months covered by the informations being January, February, March, April, May, June, July, August and September, 1931. All the informations were in the same form and the one for January, 1931, is as follows:

OFFER IN EVIDENCE

[fol. 213] EXHIBIT E

Preliminary Information

STATE OF IOWA,
Pottawattamie County, ss:

STATE OF IOWA

against

MONAMOTOR OIL COMPANY, a Corp., H. A. Searle, President; F. H. Searle, Vice-president, and E. D. Judd, Secretary and Treasurer of said MonaMotor Oil Co., a Corp.

Before J. L. Blanchard, Judge of Municipal Court

The above named defendant is hereby accused of the crime of making an incomplete and false return in viola-

tion of as provided in Section 5093-A5 and 5093-A7 of the Code of 1927.

For that the defendant, on or about the 19th day of January, 1931, in Kane Township, in the said County and State did unlawfully and in violation of Sections No. 5093-A5 and No. 5093-A7 of the 1927 Code of Iowa, make and return to the State Treasurer of Iowa, a false and incomplete report and return of gasoline imported by the MonaMotor Oil Company, a corporation, into the State of Iowa, during the month of December, 1930, contrary to the statute in such case made and provided.

Wherefore, the informant herein prays that the said MonaMotor Oil Co., a corp., H. A. Searle, President; F. H. Searle, Vice-president and E. D. Judd, Secretary and Treasurer as aforesaid, be arrested and dealt with as provided by law.

(Signed) O. L. Mead.

Subscribed and sworn to by the said O. L. Mead before me this 9th day of April, 1932. J. L. Blanchard, Judge of Municipal Court.

[fol. 214] In the Municipal Court of the City of Council Bluffs, Iowa

No. 11-3860

State of Iowa, Plaintiff,

vs.

MonaMotor Oil Company, a Corporation et al., Defendants

Notice

To the MonaMotor Oil Company, a corporation:

You are hereby notified that there is now on file in the office of the Clerk of the Municipal Court of the City of Council Bluffs, Iowa, an information entitled: State of Iowa vs. MonaMotor Oil Company, a corporation, etc., said information charging, that on or about the 19th day of January, 1931, said defendants did make an incomplete and false return to the Treasurer of the State of Iowa, of gasoline imported by the MonaMotor Oil Company, a corporation, into the State of Iowa during the month of December,

1930, in violation of sections No. 5093-A5 and No. 5093-A7 of the 1927 Code of Iowa; and, that you must forthwith appear in said court and answer the same.

Witness my hand and seal of said Municipal Court hereunto affixed at my office in Council Bluffs, Iowa, this 14th day of April, 1932.

H. V. Battey, Clerk of the Municipal Court of the City of Council Bluffs, Iowa. (Seal.)

[fol. 215] IN THE MUNICIPAL COURT OF THE CITY OF COUNCIL BLUFFS, IOWA

No. 3860

STATE OF IOWA

vs.

MONA MOTOR OIL COMPANY, a Corporation; H. A. Searle, President; F. H. Searle, Vice president and E. D. Judd, Secretary & Treasurer of Said Mona Motor Oil Company, a Corporation

John L. Blanchard, Judge.

Charge: False return, etc. December 1930.

Be it remembered, That on the 9th day of April, A. D., 1932, came O. L. Meade and filed information under oath charging the defendants with the crime of false return, etc., December 1930. Warrant issued and placed in the hands of C. G. Ingraham, Bailiff, for service on the 9th day of April, 1932. Warrant returned April 11, 1932, served by arresting defendants.

Hearing set for 19th day of April, 1932, at 9 o'clock A. M. Bond for appearance fixed at $500.00 each and in default of bond ordered that defendants be committed to jail. Separate bonds for appearance of H. A. Searle, F. H. Searle and E. D. Judd filed and approved. Order of release issued.

4 15 32.—Notice of filing information, sith service of Mona Motor Oil Company filed.

4 19 32.—Continued by agreement of parties until May 19, 1932, at 9 A. M.

5 13 32.—Continued to June 15, 1932 at 9 A. M., by agreement.

STATE OF IOWA,
Pottawattamie County, ss:

I, H. V. Battey, Clerk of the Municipal Court of the City of Council Bluffs, Iowa, do hereby certify that the above and foregoing is a true and complete copy of the record in the above entitled cause as the same remains of record in my office, and of the information and notice, as the same remains on file.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 3rd day of February, A. D., 1933.

H. V. Battey, Clerk of Municipal Court. (Seal.)

[fol. 216] Indictments were returned by the grand jury of Pottawattamie County, Iowa, against the MonaMotor Oil Company, a corporation, and its officers, charging the making of incomplete and false reports to the Treasurer of the State of Iowa for the months of April, May and July 1930, and January to July inclusive, 1931. Each indictment related to the report for a particular month, and were in the same form, and attached hereto is the indictment for the month of July, 1931.

OFFER IN EVIDENCE

[fols. 217 & 218] DISTRICT COURT OF POTTAWATTAMIE COUNTY, IOWA, AT COUNCIL BLUFFS, AUGUST TERM, 1932

THE STATE OF IOWA

against

MONAMOTOR OIL COMPANY, a Corporation; H. A. SEARLE, SR., F. H. Searle, E. D. Judd, H. A. Searle, Jr., and E. L. Walters, Defendants

Indictment

The Grand Jury of the County of Pottawattamie, in the name and by the authority of the State of Iowa, accuses MonaMotor Oil Company, a corporation; H. A. Searle, Sr.; F. H. Searle; E. D. Judd; H. A. Searle, Jr., and E. L. Walters of the crime of making an incomplete and false

report as provided by Sections 5093-A5 and 5093-A7 of the 1931 Code of Iowa committed as follows:

For that the said MonaMotor Oil Co., a corporation; H. A. Searle, Sr.; F. H. Searle; E. D. Judd, H. A. Searle, Jr., and E. L. Walters on or about the 3rd day of July A. D. 1931, in the said County of Pottawattamie and State of Iowa, and west of the west line of Range 40, therein, the said MonaMotor Oil Company being then and there a corporation, and H. A. Searle, Sr., its president, F. H. Searle, its Vice-president, E. D. Judd its Secretary and Treasurer, H. A. Searle, Jr., its Superintendent or General Manager, E. L. Walters its General Traffic Manager, and each and all of said named officers, being principal officers of said MonaMotor Oil Company, did unlawfully and in violation of Sections 5093-A5 and 5093-A7 of the 1931 Code of Iowa, make and return to the State Treasurer of Iowa, a false and incomplete report of gasoline imported by the MonaMotor Oil Company, a corporation, into the State of Iowa, during the month of June, 1931.

Bert L. Dickason, County Attorney.

[fol. 219] Exhibit 1

In the District Court of Iowa in and for Pottawattamie County

State of Iowa and R. E. Johnson, Treasurer of the State of Iowa, Plaintiffs,

vs.

MonaMotor Oil Company, a Corporation, Defendant

Petition

Comes now the plaintiffs and for cause of action against the defendant states:

That the plaintiff, R. E. Johnson, is the duly elected, qualified and acting Treasurer of the State of Iowa, and as such treasurer of State, is vested by law with the duty of collecting the gasoline license tax which is due the State of Iowa, under Chapter 251-A1, Code of Iowa, 1927, and Section 4755-B38, Code of Iowa, 1927, and Chapter 251-A1

Code of Iowa, 1931, and Sections 4755-B28, Code of Iowa, 1931.

That the defendant, Mona Motor Oil Company, has been engaged and is at present time engaged in the sale of gasoline at Council Bluffs, Iowa, and elsewhere in the State of Iowa, and has been so engaged since January 1st, 1929 and prior thereto.

That according to the books and records of said defendant, the said defendant imported into the State of Iowa, and sold gasoline and collected the license fees provided by law thereon, for the period from January 1st, 1929, to March 31st, 1932, upon which there is now payable to the State of Iowa, the sum of Twenty-four Thousand Nine Hundred Fifty-nine and 10/100 Dollars ($24,959.10), and that said sum is now due and unpaid, and that there is a penalty as provided by statute due to the State of Iowa upon said delinquent license fees in the sum of Two Thousand Four Hundred Ninety-five and 91/100 Dollars ($2,495.91), making a total sum due the State of Iowa at this time of Twenty Seven Thousand Four Hundred Fifty-five and 01/100 ($27,455.01).

That according to the books and records of said defendant the said defendant imported gasoline into the State of [fol. 220] Iowa during the period above set out and received license fees upon gasoline used and sold and otherwise disposed of within the State of Iowa, upon which license fees are due to the State of Iowa in the sum above set out.

That on or about the 15th day of April, 1932, it was verbally agreed by and between the defendant and the plaintiffs that the plaintiffs were to employ certified public accountants to make an audit of the books and records of the defendant to ascertain the amount of the license fees which were due to the plaintiff and the defendant then and there agreed to pay the sum so ascertained. That the plaintiffs thereupon employed Wolf & Company, certified public accountants, to make a detailed audit of the books and records of the defendant to ascertain the amount of the license fees due and owing by the defendant to the plaintiffs and the plaintiffs expended large sums in such audit. That the said audit was completed and a copy thereof furnished to the defendant about the 15th day of August, 1932, and said audit shows that the defendant is

indebted to the plaintiffs to the amount and in the sum of Twenty-four Thousand Two Hundred Fifty-three and 50/100 Dollars ($24,253.50), and the defendant is bound thereby; and estopped from denying the correctness thereof.

That on or about the 15th day of August, 1932, the plaintiff, State Treasurer, made a demand upon the defendant for the payment of the license fees thus ascertained, in words and figures as follows, to-wit:

"August 15, 1932.

Mona Motor Oil Company, Council Bluffs, Iowa.

GENTLEMEN: We are in receipt of the report of an audit made of your institution by Wolf & Company covering the period of January 1st, 1929 to March 31st, 1932.

Folio 8 of the report shows eleven cars of gasoline delivered to various companies. Of the eleven cars shown on the report eight of them were located on reports of various distributors. The following three cars could not be located as we find no record of the names shown as distributors or purchaser of the gasoline:

[fol. 221]

Date of invoice	Car number	Gallonage	Destination
Jan. 31, 1929	NATX 5000	8139	J. S. Filling Station, Council Bluffs, Iowa.
Aug. 2, 1929	" 15152	7962	Holton Oil Co., Clinton
Jan. 16, 1930	" 7465	8146	Co-operative Gas & Oil Co., Sioux Center.

The invoiced gallonage of these three cars amounts to 24,247 gallons. Deducting 3% allowed for shrinkage therefrom leaves 23,520 gallons, on which tax at 3¢ per gallon amounts to	$705.60
Net total of gasoline imported into the state of Iowa and tax not paid (See Exhibit A, Folio 10) is 808,450 gallons, which at 3¢ per gallon amounts to	24,253.50
Total	$24,959.10
Penalty at 10% as provided by law	2,495.91
Grand total due the State of Iowa	$27,455.01

Demand is made at this time for payment of the unpaid tax. In making report covering the amount claimed use regular report blanks, setting forth gallonage as above stated, referring to the copy of the audit for verification of the gallonage.

Yours very truly, R. E. Johnson, Treasurer of State.

That the defendant acknowledged said demand but has wholly failed to pay the sum due to the plaintiff as above and that said sum is still due and unpaid, and that the claim of this plaintiff is for money due from the defendant to the State of Iowa on account of gasoline license fees imposed as by law provided.

That attached hereto and made a part hereof is the affidavit of the Attorney General, marked Exhibit "A," which by reference is made a part hereof.

Wherefore, plaintiffs pray that a writ of attachment issue forthwith against the goods, merchandise and property of the defendant wherever found, and that this plaintiff have judgment against the defendant in the sum of Twenty-seven Thousand Four Hundred Fifty-five and 01 100 Dollars ($27,455.01), with interest thereon as by law provided and from the date of the filing of this action, together with costs.

John Fletcher, Attorney General, John J. Hess, Special Assistant Attorney General, Attorneys for Plaintiff.

[fol. 222] State of Iowa,
Polk County, ss:

I, R. E. Johnson, being first duly sworn, on oath, depose and say that I am the duly elected, qualified and acting Treasurer of the State of Iowa, and as such plaintiff in the foregoing cause of action; that I have read the foregoing Petition and know the contents thereof to be true as I verily believe.

R. E. Johnson.

Subscribed and sworn to before me this 14th day of October, 1932. J. F. McElderry, Notary Public in and for Polk County, Iowa. (Seal.)

State of Iowa,
Pottawattamie County, ss:

I, John J. Hess, being first duly sworn on oath depose and say that I am special assistant attorney general of the State of Iowa; that I have read the above and foregoing petition and am familiar with the facts therein stated and the amount stated as being due from the defendant in said petition is justly due, and that the defendant has refused to pay or secure the same and that unless an attachment is issued against the property of the defendant there is danger that the amount due will be lost to the State, and that all of the allegations and statements contained in said petition are true as I verily believe.

John J. Hess.

Subscribed and sworn to before me this 14th day of October, 1932. Josephine Scott, Notary Public. (Seal.)

[fol. 223] In the District Court of the State of Iowa, in and for Pottawattamie County, November Term, A. D. 1932

State of Iowa and R. E. Johnson, Treasurer of the State of Iowa, Plaintiff,

vs.

Mona Motor Oil Company, a Corporation, Defendant

Original Notice

To the Above Named Defendants:

You are hereby notified that there is now on file in the office of the Clerk of the District Court of the above named County and State, a petition of plaintiff claiming of you the sum of Twenty-seven Thousand Four Hundred Fifty-five and 01 100 Dollars ($27,455.01), with interest as provided by law, as justly due from the defendant to the plaintiffs as license fees upon gasoline imported into the State of Iowa and sold and otherwise disposed of; which license fees are due the State of Iowa under the provisions of law. You are further notified that an attachment has been issued to secure the sum due to the plaintiff.

For further facts see petition now on file.

Now, unless you appear thereto and defend on or before noon of the second day of the next term of said Court to be held at Council Bluffs, in said County, commencing on November 9th, 1932, default will be entered against you and judgment rendered thereon in accordance with the prayer of said petition.

John Fletcher, Attorney General, John J. Hess, Spl. Asst. Atty. Gen., Attorney for Plaintiff.

[fol. 224] Notice of Levy of Attachment

State of Iowa and R. E. Johnson, Treasurer of the State of Iowa, Plaintiff-,

vs.

Mona Motor Oil Company, a Corporation, Defendant

Notice to Defendant of Attachment

To Mona Motor Oil Company, a corporation:

You are hereby notified that by virtue of a Writ of Attachment issued by Clerk of the District Court in and for Pottawattamie County, at Council Bluffs, Iowa, in the above entitled action and to me directed, I have this day attached and do hereby levy upon and attach the following described property of the above named defendant, in Pottawattamie County, Iowa, to-wit: All property of defendant found by you in Pottawattamie County, Iowa.

All done within Pottawattamie County, State of Iowa, this 14th day of October A. D. 1932.

Witness my official signature, this 14th day of October A. D. 1932.

Percy A. Lainson, Sheriff of Pottawattamie County, Iowa, by Inga A. Johnson, Deputy.

[fol. 225] No. —. Docket No. —. Page No. —.

State of Iowa and R. E. Johnson, Treasurer of the State of Iowa, Plaintiff-,

vs.

Mona Motor Oil Company, a Corporation, Defendant

Sheriff's Levy

I hereby certify that the annexed Writ of Attachment came into my hands the 14th day of October 1932, at 11:40 o'clock A. M., and by virtue thereof on the 17th day of

October 1932, at 10:40 o'clock A. M., I levied on the following described property as the property of the said defendant, to-wit:

Lots 1, 2, 3, 4, 5, 6, 7, 14, 15, 16, 17, 18, 19 and 20, Block 14, Riddles Addition; and Lot 3, Block 19, Riddles Addition; Commencing at a point on the South line of Avenue H, 450.6 feet East of the intersection of said South line of Avenue H, and the center line of Fifth Street extended, said point being situated in and a part of Government Lot 3 in Section 20, Township 75, Range 44, West of the 5th P. M. in Pottawattamie County, Iowa, running thence East along the south line of Avenue H, 869.6 feet, thence South 580 feet to the Northerly Right of Way line of the Omaha Bridge & Terminal Railway, thence west along the northerly line of said Right of Way 869.4 feet, thence north 580 feet to the place of beginning, being East 11.58 acres of that part of Lot 19 according to the unrecorded plat of East Omaha prepared by Towl Engineering Company of Omaha, lying south of Avenue H, East of Fifth Street extended and north of the Right of Way line of the Omaha Bridge & Terminal Railway. Also commencing at the point of intersection of the South line of Avenue H and the center line of Fifth St. extended, said point being situated in and a part of Government Lot 3 and accretions thereto, in Section 20, Township 75, Range 44, West of the 5th P. M., Pottawattamie County, Iowa, running thence South 580 feet to the Northerly Right of Way line of the Omaha Bridge & Terminal Railway, thence East along the Northerly line of said Right of Way 450.6 feet, thence North 580 feet to the South line of Avenue H, thence West along the South line of Avenue H, 450.6 feet to the place of beginning, being also described as the West 6 acres of that part of Lot 19 according to the unrecorded plat of East Omaha prepared by Towl Engineering Co. of Omaha, lying South of Avenue H, East of Fifth Street extended, and North of the Right of Way line of the Omaha Bridge & Terminal Railway. Incumbrance Book No. 4, page No. 167.

Percy A. Lainson, Sheriff, by Inga A. Johnson, Deputy.

Received the — day of ——, 193-, of —— ——, Sheriff, the above described property for care and custody until further orders of the Sheriff.

—— ——, Custodian.

[fol. 226] IN THE DISTRICT COURT OF POTTAWATTAMIE COUNTY, IOWA

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa,

vs.

MONAMOTOR OIL COMPANY, a Corporation

Dictation to Sheriff

SIR: You will serve the writ of attachment in the above entitled cause by levying upon the following described property, to-wit:

All property of the defendant found by you in Pottawattamie County, Iowa.

Dated this 14th day of October, A. D. 1932.

(Signed) John J. Hess, Spl. Asst. Attorney General, Atty. for Plaintiff.

[fol. 227] IN THE DISTRICT COURT OF POTTAWATTAMIE COUNTY, IOWA

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiff,

vs.

MONAMOTOR OIL COMPANY, a Corporation, Defendant

Writ of Attachment

STATE OF IOWA,
Pottawattamie County, ss:

The State of Iowa to the Sheriff of said County, Greeting:

Whereas, the plaintiffs in the above action has filed in the office of the undersigned clerk of the District Court, in and for said County and State aforesaid, his petition under oath stating that the defendant is justly indebted to the plaintiff in the sum of Twenty-seven Thousand Four Hundred Fifty-five and 01/100 Dollars ($27,455.01), and asking that a writ of attachment may issue against the property of said defendant, or so much thereof as may be necessary to secure the plaintiff's claim;

Therefore, in the name of the State of Iowa, you are commanded to attach the property of the said Mona Motor Oil Company, a corporation, wherever the same be found in your county, or so much thereof as may be necessary to satisfy the above stated indebtedness, together with interest and cost of the suit, and safely preserve the same, to be dealt with according to law, and to summon such persons as garnishees, as you may be required in the premises, and according to law in such causes set forth, and make return of your doings in the premises of the District Court of Pottawattamie County, Iowa, on the first day of the next term of said Court.

Witness my official signature, with the seal of said Court hereunto affixed at my office in said County, this 14th day of October, A. D. 1932.

Chas. C. Lacy, Clerk of said Court, by Roy Hardesty, Deputy. (Seal.)

[fol. 228] [Stamp:] Filed Nov. 10, 1932. — o'clock ., m. — —, Clerk, Dist. Court

IN THE DISTRICT COURT OF IOWA IN AND FOR POTTAWATTAMIE COUNTY

30294

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiffs,

vs.

MONA MOTOR OIL COMPANY, a Corporation, Defendant

Petition for Removal.

To the Honorable O. D. Wheeler, Judge of the District Court of Iowa in and for Pottawattamie County:

The petiton of the Mona Motor Oil Company, defendant in the above entitled cause, respectfully shows to this Court:

I

That the above entitled suit has been brought in this Court and is now pending therein.

II

That said action is of a civil nature at law, and is brought by the State of Iowa and R. E. Johnson, the duly elected,

qualified and acting treasurer of said state, under and by virtue of Chapter 251-A1 of the Code of Iowa, 1927, and Section 4755-b38 of the Code of Iowa 1927; and Chapter 251-A1 of the Code of Iowa 1931, and Section 4755-b28 Code of Iowa 1931, to recover of the MonaMotor Oil Company, defendant, the amount Twenty-four Thousand Nine Hundred Fifty-nine & 10 100 Dollars ($24,959.10), together with a penalty of Two Thousand Four Hundred Ninety five & 91 100 Dollars ($2,495.91), or an aggregate of Twenty-seven Thousand Four Hundred Fifty-five & 01 100 Dollars ($27,455.01), as and for alleged gasoline fees upon gasoline alleged to have been imported into the State of Iowa and sold by said defendant MonaMotor Oil Company during the period from January 1, 1929, to March 31, 1932, which alleged gasoline license fees or taxes are alleged not to have been paid by the said MonaMotor Oil Company to the State of Iowa, or to R. E. Johnson, Treasurer of the State of Iowa, or to R. E. Johnson.

[fol. 229] III

That said petition appears herein specially and solely for the purpose of petitioning the above entitled court for its order removing the above entitled cause to the United States District Court for the Southern District of Iowa.

IV

The petitioner states as grounds for the removal of said cause:

That the above entitled action involves a controversy between the State of Iowa and R. E. Johnson, Treasurer of the State of Iowa, and the said MonaMotor Oil Company, and involves an action between citizens of different states, in that the said R. E. Johnson, Treasurer of the State of Iowa, is a resident and citizen of the County of Muscatine in the State of Iowa, in the Southern District of the State of Iowa, and is acting as the treasurer of the State of Iowa in Polk County, State of Iowa, in the Southern District of the State of Iowa, and within the jurisdiction of this court and within the jurisdiction of the District Court of the United States for the Southern District of Iowa. That the MonaMotor Oil Company is a corporation organized and existing under and by virtue of the laws of the State of

Arizona, and is a resident and citizen of the State of Arizona, but is doing business at Council Bluffs, Pottawattamie County, State of Iowa, which is located in the jurisdiction of the District Court of the United States for the Southern District of Iowa. And that said plaintiff, R. E. Johnson, was such resident and citizen as above alleged, and the said MonaMotor Oil Company, defendant, was such citizen and resident as above alleged, at the time of the commencement of this action, and now are such citizens and residents.

V

That said suit be of a civil nature at law under the Constitution and laws of the United States, and particularly Section 41 of Chapter 2, Title 28 of Mason's United States Code, being Section 24, as amended, of the Judicial Code, in that the said suit is one arising under the Constitution or [fol. 230] laws of the United States, in that it is the defense of the said defendant, MonaMotor Oil Company, among other things, that said Chapter 251-A1 of the Code of Iowa 1927; and Section 4755-B38 of the Code of Iowa 1927, and Chapter 251-A1 of the Code of Iowa 1931, and Section 4755-B28 of the Code of Iowa 1931, are unconstitutional and void and in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and denies to the MonaMotor Oil Company, defendant, the equal protection of law, and denies to said defendant due process of law guaranteed to it by the Constitution of the United States, and that said chapters and sections of the Code of Iowa 1927 and the Code of Iowa 1931 above referred to are in contravention of Paragraph 2 of Section 10 of Article I of the Constitution of the United States, in that the said sections impose a tax burden upon the interstate commerce of the said defendant and is a direct burden upon the interstate commerce of the said defendant and is a direct burden thereon prohibited and prevented by said Paragraph 2 of Section 10 of Article I of the Constitution of the United States, and that said sections constitute a direct discrimination against imported gasoline contrary to the sections of the Constitution of the United States above referred to.

That in the petition of the plaintiff in the above entitled action taxes are claimed against the MonaMotor Oil Company, defendant, and judgment is asked therefor by reason of gasoline imported into the State of Iowa under and by virtue of the statutes of the State of Iowa referred to in

said petition and herein, and it is the claim of this petitioner that imported gasoline is immune from any such taxation and that said statutes referred to in said petition and herein and the claim of the plaintiff made herein seeks to destroy the privileges and immunities granted to such importations and to this defendant as the importer, under and by virtue of the provisions of the Constitution of the United States hereinabove referred to, for the reason that such imported gasoline is not subject to tax by the state of Iowa without destroying such immunities granted to this [fol. 231] petitioner by the Constitution of the United States and the provisions hereinabove referred to, and that this action involves a construction of such provisions of the Constitution of the United States and their application to the facts of this cause and the statutes of the State of Iowa above referred to.

VI

That said action is one of which the District Courts of the United States are given original jurisdiction.

VII

That the time within which your petitioner is required by the laws of the state of Iowa and the rules of this court to answer or plead to the petition of the plaintiff in the above entitled action has not expired.

VIII

That the value of the matter in controversy in said action exceeds Three Thousand Dollars ($3,000.00), exclusive of interest and costs, as appears from the allegations of plaintiffs' petition.

IX

That petitioner presents herewith a bond conditioned that it will enter in the District Court of the United States for the Southern District of Iowa, within thirty (30) days from the date of the filing of this petition, a certified copy of the record in this action, and that it will pay all costs that may be awarded by the said District Court in case the said court shall hold that this suit was wrongfully or improperly removed thereto.

X

That prior to the filing of this petition and bond for the removal of this cause, written notice of intention to file the same was given by petitioner to the plaintiff, as required by law, a true copy of which, with proof of the service of the same, is attached hereto.

Wherefore, petitioner prays that the said bond may be accepted as good and sufficient, and that this court will make its order for the removal of the said cause into the District Court of the United States for the Southern District of Iowa, pursuant to Section 29 of the Judicial Code, [fol. 232] and cause the record hereof to be removed into said District Court and that no other or further proceedings may be had in said cause in this court.

Dated at Council Bluffs, Iowa, this 9th day of November, 1932.

MonaMotor Oil Company, Petitioner, by Wright & Baldwin, Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Its Attorneys.

STATE OF IOWA,
Pottawattamie County, ss:

Clyde Fuller, being first duly sworn, on oath says that he is the manager of the MonaMotor Oil Company, the petitioner above named; that he has read the foregoing petition, and that the same is true of his knowledge.

Clyde Fuller.

Subscribed in my presence and sworn to before me this 9th day of November, 1932. Geo. S. Wright, Notary Public. (Seal.)

[fol. 233] IN THE DISTRICT COURT OF IOWA IN AND FOR POTTAWATTAMIE COUNTY

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiffs,

vs.

MONA MOTOR OIL COMPANY, a Corporation, Defendant

Notice

Filed Nov. 10, 1932. Chas. C. Lacy, Clerk

To the above named plaintiffs or to J. J. Hess or John Fletcher, their attorneys of record:

You are hereby notified that the above named defendant intends to and will file, on the 9th day of November, 1932, in the above entitled cause, in said District Court of Iowa in and for Pottawattamie County, this notice and their petition and bond for the removal of this cause to the District Court of the United States for the Southern District of Iowa, and that on the 10th day of November, 1932, at the hour of 9:30 o'clock A. M., or as soon thereafter as counsel can be heard, the defendants will pray that an order be made in accordance with the prayer of said petition.

Wright & Baldwin, Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Attorneys for Defendant.

Received copy of this notice and of said petition and bond this 9th day of November, 1932.

John J. Hess, Spl. Asst. Atty. General, Attorneys for Plaintiff.

[fol. 234] IN THE DISTRICT COURT OF IOWA IN AND FOR POTTAWATTAMIE COUNTY

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiffs,

vs.

MONAMOTOR OIL COMPANY, a Corporation, Defendant

Bond

Filed and Approved Nov. 10, 1932. Chas. C. Lacy, Clerk, by Raymond Hatch, Deputy

Know all men by these presents:

That MonaMotor Oil Company, a corporation, as Principal, and the United States Fidelity & Guaranty Company, a corporation, as surety, are held and firmly bound unto the above named State of Iowa and R. E. Johnson, Treasurer of the State of Iowa, plaintiffs in the above entitled suit, their heirs, representatives and assigns, in the penal sum of Five Hundred Dollars ($500.00) lawful money of the United States, forever, for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our successors and assigns, jointly and severally, by these presents.

The condition of this obligation is such that, whereas, the said defendant has filed in the District Court of Iowa in and for Pottawattamie County, at Council Bluffs, Iowa, its petition for the removal of a certain cause therein pending, in which the said State of Iowa and R. E. Johnson, Treasurer of the State of Iowa, are plaintiffs, and the above named MonaMotor Oil Company is defendant, said cause being entitled as above, to the District Court of the United States for the Southern District of Iowa, as in said petition set forth,

Now therefore, if said petitioner, the said MonaMotor Oil Company, shall enter in the District Court of the United States for the Southern District of Iowa, within thirty (30) days from the date of the filing of said petition for removal, a certified copy of the record in said cause, and shall pay all costs that may be awarded by the said District [fol. 235] Court of the United States for the Southern District of Iowa, if said District Court of the United States

shall hold that said suit was wrongfully and improperly removed thereto, then this obligation shall be void; otherwise to remain in full force and effect.

Executed by us at Council Bluffs, Iowa, this 9th day of November, 1932.

MonaMotor Oil Company, by Clyde Fuller. United States Fidelity & Guaranty Company, by E. R. McDonnell, Atty.-in-Fact.

[fol. 236] IN THE DISTRICT COURT OF IOWA IN AND FOR POTTAWATTAMIE COUNTY

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiffs,

vs.

MONAMOTOR OIL COMPANY, a Corporation, Defendant

Order

Filed Nov. 10, 1932. Chas C. Lacy, Clerk

This cause coming on for hearing upon the petition and bond of the defendant herein for an order transferring this cause to the District Court of the United States for the Southern District of Iowa, and it appearing to the Court that defendant has filed its bond duly conditioned, with good and sufficient surety as provided by law, and that defendant has given plaintiff due and legal notice thereof; and it appearing to the court that this is a proper cause for removal to said United States District Court;

Now, therefore, said petition and bond are hereby accepted, and it is hereby

Ordered and adjudged that this cause be and is hereby removed to the United States District Court for the Southern District of Iowa, and the Clerk is hereby directed to make up the record in said cause for transmission to said United States District Court forthwith.

Done in open court this 10th day of November, 1932.

(Sgd.) O. D. Wheeler, Judge.

[fol. 237] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF IOWA, WESTERN DIVISION

No. 347. Law

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiffs,

vs.

MONA MOTOR OIL COMPANY, a Corporation, Defendants

Motion to Make Petition More Definite and Certain

Filed December 5, 1932. N. F. Reed, Clerk, by Gladys Gretzer, Deputy

Comes now the defendant and moves the Court to require the plaintiffs to make their petition more definite and certain in the following particulars, to-wit:

I

Let the plaintiffs be required to state the number of gallons of gasoline imported by the Mona Motor Oil Company during each of the calendar months referred to in plaintiffs's petition, giving the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which such gasoline is claimed to have been imported into the State of Iowa, and let them state definitely the gasoline imported upon which it is claimed the Mona Motor Oil Company has failed to pay the tax referred to.

II

Let the plaintiffs be required to state what, if any, part of said gasoline upon which the tax of 3¢ per gallon is claimed was gasoline manufactured at Carter Lake, Iowa.

Wright & Baldwin, Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Attorneys for Defendant.

Copy mailed to J. H. Hess, Council Bluffs, Iowa.

[fol. 238] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA, WESTERN DIVISION

No. 347. Law

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiffs,

vs.

MONAMOTOR OIL COMPANY, a Corporation, Defendant

Notice of Motion to Remand

Filed December 23, 1932. N. F. Reed, Clerk, by Gladys Gretzer, Deputy

To the MonaMotor Oil Company, a Corporation; and to Geo. S. Wright, Addison G. Kistle and Paul E. Roadifer, Attorneys for the MonaMotor Oil Company:

You, and each of you are hereby notified that on the 31st day of December, 1932, at 10 o'clock A. M., on the forenoon of that day, or as soon thereafter as counsel may be heard in the District Court of the United States for the Southern District of Iowa, at Des Moines, Iowa, the plaintiffs, through their attorneys will present to a judge of the United States District Court for the Southern District of Iowa, a motion and petition to remand the above entitled cause to the District Court of Pottawattamie County, Iowa, from which court said cause was removed. Attached to this notice is a copy of said motion and petition, to which you will take due notice.

Dated this 23rd day of December, 1932.

John Fletcher, Attorney General, John J. Hess, Spl. Asst. Atty. General, Attorneys for Plaintiffs.

Service of the foregoing Notice on Motion to Remand, together with a copy thereof and copy of the Motion to Remand is this day accepted and received at Council Bluffs, Iowa.

Dated December 23, 1932.

Geo. S. Wright, Addison G Kistle, Paul E. Roadifer, Attorneys for Defendants.

[fol. 239] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA, WESTERN DIVISION

No. 347. Law

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiffs,

vs.

MONA MOTOR OIL COMPANY, a Corporation, Defendant

Motion to Remand Cause to the District Court of Pottawattamie County, Iowa

Filed December 23, 1932. N. F. Reed, Clerk, by Gladys Gretzer, Deputy

To the Honorable Judge of the District Court of the United States for the Southern District of Iowa, Western Division:

Comes now the plaintiffs herein and move the court to remand the above entitled cause to the District Court of Iowa in and for Pottawattamie County, Iowa, and for cause therefor, states:

1st. That this is an action brought by the State of Iowa against the defendant for the recovery of certain alleged license fees due to the State of Iowa from the defendant, growing out of its business with the State of Iowa, and as such is not one of the causes which is by law removable from the state district court to the district court of the United States.

2nd. That the state is not a citizen and this action is not a suit between citizens of different states and therefore the same is not removable from the state courts to the courts of the United States, by reason of the divers- citizenship of the parties.

3rd. That the petition of the plaintiff herein does not show that it is a suit removable to the Federal Courts under the Judiciary Acts of the United States relating to suits by citizens of different states.

Wherefore, the plaintiffs ask that this court make an order remanding said cause of action which has been re-

moved from the state court to the district court of the United States back to the district court of the State of Iowa in and for Pottawattamie County, in which court said action was begun.

John Fletcher, Attorney General, John J. Hess, Spl. Asst. Atty. Gen., Attorneys for Plaintiffs.

[fol. 240] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA, WESTERN DIVISION

No. 347. Law

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiffs,

vs.

MONA MOTOR OIL COMPANY, a Corporation, Defendant

Notice of Hearing on Amendment of Motion to Remand and Petition to Remand Cause

Filed December 29, 1932. N. F. Reed, Clerk, by Gladys Gretzer, Deputy

To the Mona Motor Oil Company, a Corporation; and to George S. Wright, Addison G. Kistle and Paul E. Roadifer, Attorneys for the Mona Motor Oil Company:

You and each of you are hereby notified that on the 31st day of December, 1932, at 10 o'clock A. M., on the forenoon of that day, or as soon thereafter as counsel may be heard in the District Court of the United States for the Southern District of Iowa, at Des Moines, Iowa, the plaintiffs through their attorneys, will present to a judge of the United States District Court for the Southern District of Iowa, an Amendment to Motion to Remand and petition to remand the above entitled cause to the District Court of Pattawattamie County, Iowa, from which court said cause was removed. Attached to this notice is a copy of said Amendment to Motion and Petition, to which you will take due notice.

Dated this 29th day of December, 1932.

John Fletcher, Attorney General, John J. Hess, Spl. Asst. Atty. Gen., Attorneys for Plaintiff.

Due and legal service of the foregoing Notice on Amendment to Motion to Remand, together with a copy thereof

and copy of said Amendment to Motion to Remand, is this day accepted and received at Council Bluffs, Iowa.

Dated this 29th day of December, 1932.

Geo. S. Wright, Addison G Kistle, Paul E. Roadifer, Attorneys for Defendants.

[fol. 241] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA, WESTERN DIVISION

STATE OF IOWA and R. E. JOHNSON, Treasurer of the State of Iowa, Plaintiffs,

vs.

MONAMOTOR OIL COMPANY, a Corporation, Defendant

Amendment to Motion to Remand and Petition to Remand Cause of Action to the District Court of Pottawattamie County, Iowa

Filed December 29, 1932. N. F. Reed, Clerk, by Gladys Gretzer, Deputy

To the Honorable Judge of the District Court of the United States for the Southern District of Iowa, Western Division:

Come now the plaintiffs herein and amending their motion to remand heretofore filed by them and for their petition to remand the above entitled cause of action to the District Court of Pottawattamie County, Iowa, allege and state:

1st. The plaintiffs specifically deny each and every allegation of the defendant's petition which allege a cause for removal of the plaintiff's action to this court.

2nd. The plaintiffs specifically deny that this action is an action between citizens of different states and allege that it is an action in behalf of the State of Iowa against the defendant; that the State of Iowa is not a citizen as contemplated by the law relating to removal of causes and therefore this action is not an action between citizens of different states and is not removal to the courts of the United States.

3rd. The plaintiffs allege that said action is not one arising under the constitution or laws of the United States, and

specifically deny the allegations of the defendant's petition for removal in this respect, and further allege that the claimed defenses of the defendant set out in Paragraph 5 of the defendant's petition for removal, are specifically denied and that such defenses are not available to the defendant as a basis for removal to this court.

[fol. 242] 4th. That under the allegations of the plaintiffs' petition it is a suit begun by the State of Iowa against the defendant to recover certain license fees alleged to be due from the defendant to the State of Iowa and no question under the law of the United States arises under the allegations of the plaintiff's petition and therefore said cause is not removal to the courts of the United States.

5th. These plaintiffs specifically deny that this action is an action in which the district court of the United States has jurisdiction.

6th. The plaintiffs specifically deny the right of the defendants to remove this cause to this court, for the reason that under the Eleventh Amendment of the Federal Constitution, it is provided that the judicial powers of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, and that this action is an action between the State of Iowa and the defendant, and is not a cause within the jurisdiction of this court.

Wherefore, plaintiffs pray that this court make an order remanding said cause to the district court of Pottawattamie County, Iowa, and make such orders in the premises as the law and justice may require.

John Fletcher, Attorney General, John J. Hess, Spl. Asst. Atty. Gen., Attorneys for Plaintiff-.

[fol. 243] State of Iowa,
Pottawattamie County, ss:

I, John J. Hess, being first duly sworn, depose and say that I am one of the attorneys for the plaintiffs in the above entitled action; that I prepared the foregoing amendment to Motion to Remand and Petition to Remand cause of action to the District Court of Pottawattamie County, Iowa,

and that the statements contained therein are true and correct.

John J. Hess.

Subscribed and sworn to before me by the said John J. Hess, this 29th day of December, 1932. Josephine Scott, Notary Public. (Seal.)

[fol. 244] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA, WESTERN DIVISION

No. 347. Law

STATE OF IOWA et al., Plaintiffs,

vs.

MONA MOTOR OIL COMPANY, a Corporation, Defendant

Order

Filed December 31, 1932. N. F. Reed, Clerk, by Gladys Gretzer, Deputy

The above entitled cause coming on for hearing in open court on a Motion to Remand, and the same having been argued and submitted

It is ordered that the Motion to Remand be and the same is hereby sustained and the cause ordered remanded to the court from which it came and the Clerk will carry out the remand in conformity with the law.

Signed at Des Moines, Iowa, this 31st day of December, 1932.

Chas. A. Dewey, Judge, U. S. District Court.

Ent. Jrl. O. page 263.

Copy mailed to J. J. Hess and Wright & Baldwin, Council Bluffs, Iowa.

Cert. copy of proceedings to Clerk Dist. Court, Pottawattamie Co.

[fol. 245] EXHIBIT 2

MonaMotor. 6/33

[Stamp:] Filed Feb. 6, 1933. N. F. Reed, Clerk

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of Gasoline Production, Purchase and Sales Records of MonaMotor Oil Co., Council Bluffs, Iowa, for Period From January 1, 1929, to March 31, 1932, by Wolf and Company, Certified Public Accountants

Wolf and Company, Accountants

New York—Chicago

Offices in Principal Cities

Hon. R. E. Johnson, Treasurer, State of Iowa, State Capitol, Des Moines, Iowa.

DEAR SIRS: In accordance with your instructions, we have audited the records of Gasoline Production, Purchase and Shipments of the MonaMotor Oil Co., Council Bluffs, Iowa, for the period from January 1, 1929 to March 31, 1932, for the purpose of determining the amount of Gasoline Taxes unpaid and due to the States of Iowa and Nebraska, and present herewith our Report as contained in the following Exhibit and Schedules, and nine pages of Comments thereon:

Folio 10	Exhibit "A"		Statement of Unpaid Gasoline Taxes.
" 11	Schedule	#1	Shipment by Truck to State of Iowa—Not Reported.
" 15	"	#2	Refinery Shipments (Tank Cars)—Not Reported.
" 17	"	#3	Direct Shipments (Tank Cars)—Not Reported.
" 18	"	#4	Gallonage Differences on Cars Reported—Refinery.
" 26	"	#5	Gallonage Differences on Cars Reported—Direct Shipments.

Folio 49	Schedu	#6	Miscellaneous Receipts of Gasoline at Council Bluffs Bulk—Not Reported.
" 50	"	#7	Analysis of Omaha Bulk.
" 54	"	#8	Shipments by Truck to State of Nebraska—Not Reported.
" 59	"	#9	Statement of Gasoline Taxes Collected from Customers and Not Reported to the State of Nebraska.
" 60	"	#10	Shipments to Dealers in Nebraska on which no Record of Tax Payment can be located.
Folio 61	Schedule	#11	Statement of Deductions for shipments out of State of Iowa.
" 65	"	#12	Cars Unloaded at Refinery—Reported to State of Iowa.
" 66	"	#13	Cars Reported to Iowa in Error.
" 67	"	#14	Cars Unloaded at Refinery and Reported to State of Nebraska.
" 70	"	#15	Cars Reported to State of Nebraska in Error.

Respectfully submitted, Wolf and Company. (Seal Wolf and Company, Accountants.)

Dated at Des Moines, Iowa, August 9, 1932.

Wolf and Company, Accountants

Comments

Scope of Service

Our examination did not include the verification of the various Assets and Liability accounts as is usual in an Audit to determine the financial position of a Company, but was limited to a detailed and comprehensive analysis of such records as were available pertaining

primarily to the production, purchase and sale of Gasoline, for the period from January 1, 1929, to March 31, 1932, to determine the amount of Gasoline Taxes unpaid and due to the States of Iowa and Nebraska for the above period.

We encountered considerable difficulty in satisfactorily checking and tracing the numerous transactions involved in the purchase and sale of Gasoline through the various Bulk and Service Stations due to the lack of proper accounting records, and also due to the many changes made in their accounting system during the period reviewed. No purchase or sales registers were kept, and no complete record of production at the Refinery could be located. Apparently no attempt had been made to keep any complete or detailed records on each Bulk or Service Station until the latter part of the period reviewed, and then only records which we found inadequate and incomplete. As a result of the above condition, we found it necessary to write up complete details covering such information as we would need, direct from purchase invoices, sales invoices, car records, etc., and to completely analyze various Bulk Station receipts and sales for such periods as there were records available.

All invoices covering Gasoline purchased were listed showing Date, Number of Invoice, Car Number, Gallonage, and Unloading Point. Included in above were shipments direct to customers and dealers, shipments to the Refinery at East Omaha, and to various Bulk Stations located in Iowa, Nebraska and other States. All of the above shipments into Iowa and Nebraska were checked to State Gasoline Tax reports made by the Company, or, in the case of direct shipments, to reports made by the dealers. Discrepancies covering cars not reported, or in gallonage reported, were listed and are included in this report.

Invoices covering Crude Oil, Cracking Stock, etc., Gasoline, Casinghead Gasoline, Kerosene, etc., shipped to the Refinery, were listed and checked, and all shipments of Gasoline and other products from the Refinery were analyzed, checked to Railroad and Car Records and to State Gasoline Tax reports. Discrepancies in these records were noted and are included in this report.

[fol. 247]

All invoices located covering purchases of Gasoline, Crude Oil and commodities used in blending were checked to respective Purchase accounts in the General Ledger or to Accounts Payable Records, and all missing invoices listed. Duplicate invoices or complete details covering missing invoices were secured direct from the vendors.

Receipts and Sales of the following Bulk Stations were analyzed for the periods shown, to determine the amount of Gasoline imported into each State, and to determine amount of Inter-State transfers of Gasoline by truck or otherwise.

Bulk station	Period covered	Explanation
Omaha	Jan. 1, 1929 to Mar. 31, 1932	Entire period under review.
Council Bluffs	Aug. 4, 1930 to Mar. 31, 1932	Records incomplete prior to Aug. 4, 1930.
Shenandoah	Mar. 1, 1930 to Mar. 31, 1932	Full period of Station Operations.
Sioux City	Aug. 2, 1929 to Mar. 31, 1932	Records incomplete prior to Aug. 2, 1929.
Dunlap	Jan. 1, 1930 to Mar. 31, 1932	Records incomplete prior to Jan. 1, 1930.
Oakland	Feb. 20, 1930 to Mar. 31, 1932	Full period of Station Operations.
Onawa	July 17, 1930 to Feb. 10, 1932	Full period of Station Operations.
Creston	Jan. 1, 1930 to Mar. 31, 1932	Records incomplete prior to Jan. 1, 1930.
Aspinwall	Dec. 26, 1928 to Mar. 15, 1932	Full period of Station Operations.
Estherville	Aug. 6, 1931 to Mar. 31, 1932	Full period of Station Operations.
Whiting	Oct. 8, 1930 to Mar. 31, 1932	Full period of Station Operations.
Milford	Jan. 1, 1931 to Mar. 31, 1932	Year 1930 checked for out State Sales. Year 1929 incomplete.
Nickerson	Jan. 1, 1930 to Mar. 31, 1932	Records incomplete prior to Jan. 1, 1930.
Bennington	Mar. 14, 1931 to Mar. 31, 1932	Full period of Station Operations.
Vermillion	Jan. 1, 1930 to Aug. 4, 1931	Reorcds incomplete prior to Jan. 1, 1930.
Yankton	Apr. 28, 1930 to Sept. 1, 1931	Full period of Station Operations (Sales Only).

In addition to an analysis of Gasoline receipts and sales, a careful check was made of other commodities which may be used in blending in all of the above Bulk Stations. Refinery shipments shown as commodities other than Gasoline were checked to Car Records, and in a representative number of cases were checked to records of cars at various Railroad offices.

Statement of Unpaid Gasoline Taxes

We show in Exhibit "A" a statement of Gasoline Taxes Unpaid and Due to the States of Iowa and Nebraska, in accordance with our findings. This is summarized as follows:

Iowa–Due from MonaMotor Oil Co	24,253.50
Nebraska–Due from MonaMotor Oil Co	36,507.42
" Due from Authiorized Dealers	3,878.58
	64,639.50

Refinery

During the year 1929 the Company purchased a Refinery at East Omaha, Iowa, beginning operation of same about September, 1929. Apparently no complete records of Refinery production or sales were kept, as these records could not be located. We did locate a series of daily reports called "Daily Process Report," from which monthly summaries were made. These reports covered the period from November 1, 1930 to March 31, 1932 only, and the information contained therein was not complete or accurate enough for us to determine the actual Gasoline production for the period. We analyzed and summarized these reports, however, with the following results:

	Gallons	
Inventory of Gasoline at Refinery Nov. 1, 1930	77,390	
Production of Gasoline, Nov. 1, 1930 to March 31, 1932, per Daily Process Reports	3,274,824	
Casinghead Gasoline received	443,352	
Gasoline received	659,694	
		4,455,260
Shipments of Gasoline per Daily Process Reports	4,254,306	
Shrinkage per Daily Process Reports	93,828	
Inventory of Gasoline at Refinery March 31, 1932	65,352	
		4,413,486
Excess Production over Shipments per Process Reports		41,774
Gasoline Shipments per Process Reports	4,254,306	
Gasoline Shipments per Refinery Sales Tickets for same period	4,239,972	
		14,334
Excess Production over Shipments per Refinery Sales Tickets		56,108

[fol. 248] We were unable to reconcile the crude oil and other products going into the Refinery, as shown by the Daily Process Reports, with our schedules of commodities purchased; and as apparently no actual Books of Account were kept on Refining operations, we were unable to secure any information of value for the period preceding November 1, 1930, as regards production.

As stated above, we were unable to locate any complete record of Refinery Sales, with the exception of some Sales Ticket books containing the tissue copies covering shipments of all commodities out of the Refinery. We prepared a complete analysis of Refinery Shipments from these tissue copies and checked same to the original invoices insofar as they could be located. Car Records and the records at various Railroad offices were also checked against shipments shown by the Refinery records, in an attempt to determine definitely that all Gasoline shipments had been properly shown as Gasoline instead of some other commodity. We noted several instances where the tissue copies of the Refinery Sales Tickets were shown as "Gasoline", the original of this tissue had been changed to "Lub Oil" or "Gas Oil", or perhaps some other commodity, and the shipping records would be shown as some commodity other than Gasoline. This would appear as if an attempt had been made to evade the tax on these cars, although we noted that a few of these cars had been reported to the State of Iowa, and the tax paid thereon. In Schedule No. 2 we show a list of cars of Gasoline shipped from the Re-

finery, which as far as we could determine have not been reported to the State of Iowa for tax purposes. This schedule shows the Date and Number of the Refinery Sales Ticket or Invoice, Car Number, Gallonage, Destination and the commodity, as shown by the tissue copy of the Invoice, and as shown by the Railroad or Car Records. The items which are marked (*) opposite the commodity indicate original Refinery Sales Tickets or Invoices which have been changed to read "Gas Oil", whereas the tissue copy reads "Gasoline".

In addition to tank car shipments of Gasoline, there was Gasoline trucked out of the Refinery to Council Bluffs, Omaha, and other points in Iowa and Nebraska. The unreported gallonage on Gasoline trucked is commented on elsewhere in this report and is shown in Schedules No. 1 and No. 8.

There were also pumpings of Gasoline out of Refinery tanks to other tanks located at the Refinery which were called "Omaha Bulk". Although actually located in the State of Iowa, the Refinery and the Omaha Bulk tanks were apparently considered by the Company as being located in Nebraska, as practically all Gasoline reported out of Omaha Bulk was reported to Nebraska. Gasoline purchased and unloaded at either the Refinery or Omaha Bulk was also reported to the State of Nebraska instead of to the State of Iowa.

Omaha Bulk

We analyzed the Receipts and Sales of Gasoline of the Omaha Bulk for the entire period January 1, 1929 to March 31, 1932. A summary of this is shown in Schedule No. 7, which indicates unreported gallonage to the State of Nebraska of 1,608,060 gallons. From this we have deducted 891,834 gallons representing Gasoline and Casinghead purchased and unloaded at the Refinery and on which the tax was paid to the State of Nebraska. Details of these cars are shown in Schedule No. 14. We are also deducting 180,441 gallons covering cars reported to the State of Nebraska in error, as shown in Schedule No. 15. According to all available records, these cars were empty or contained commodities other than Gasoline. The Gasoline represented by the cars reported to the State of Nebraska and unloaded at the Refinery is included in the Gasoline

pumped out of the Refinery tanks or shipped either by tank car or truck out of the Refinery, the tax being charged at time of shipment. In order not to duplicate the charge for the tax it is necessary to deduct this from the unreported gallonage to the State of Nebraska. The final net gallonage unreported to Nebraska from Omaha Bulk as shown by Schedule No. 7, is 519,712 gallons, which on a taxable basis of 4¢ per gallon indicates a tax due of $20,788.48.

Interstate Shipments

Gasoline was trucked into Iowa from Nebraska Bulk Plants, the Refinery, and Minnesota and Illinois, being unloaded in Iowa Bulk Plants or Service Stations. From the analysis of Omaha, Nickerson, other Bulk Plants, and Refinery shipment records, the Gasoline trucked to Iowa is shown in Schedule No. 1 under the unloading point, whether Council Bluffs, Sioux City, Shenandoah, Oakland, Dunlap, Whiting, Milford, Davenport, or Iowa Service Stations (which were considered as Iowa at Large). The total Gasoline Gallonage trucked into the State of Iowa for each month is set out, together with the Gallonage as Reported to the State, and the Unreported Gallonage, in the above schedule.

The Unreported Gasoline Gallonage into Iowa as shown by Schedule No. 1 aggregates 610,978 net gallons after provision has been made for evaporation and loss of 3%, and the Tax due on above gallonage of $18,329.34.

[fol. 249] Gasoline was trucked into Nebraska from Iowa Bulk Plants, Refinery and South Dakota, being unloaded in Nebraska Bulk Plants, Service Stations, and Private Concerns. From the analysis of Council Bluffs, Sioux City, Shenandoah, Yankton Bulk Plants, and Refinery shipment records, the Gasoline trucked to Nebraska is shown in Schedule No. 8 under the unloading point, whether Nickerson, Benington, or Nebraska Service Stations and Private Concerns, (which were considered as Nebraska at Large). The Gallonage trucked into Nebraska from Sioux City during May, June, July and August, 1929, was taken as reported to Nebraska, as no records were available on Sioux City Bulk prior to August 2, 1929. The total Gasoline Gallonage trucked into the State of Nebraska for each month is set out, together with the Gallonage as Reported to the

State, and the Unreported Gallonage, in the above schedule.

The Unreported Gasoline Gallonage into Nebraska as shown by Schedule No. 8 aggregates 277,123 net gallons after provision has been made for evaporation and loss of 3%, and the Tax due on above gallonage is $11,100.42.

For Gasoline exported out of the State of Iowa, the taxpayer is allowed to deduct same from the report of importations, after provision has been made for evaporation and loss of 3%. From the analysis of Iowa Bulk Plants the exportations are shown in Schedule No. 11 under the State to which the gasoline was shipped. The gallonage exported from Sioux City Bulk during May, June, July and August, 1929, was taken as reported to Nebraska, as no records were available prior to August 2, 1929. The total Gasoline Gallonage exported out of Iowa for each month is set out, together with the Gallonage Deducted on the State Reports, and the over or under deducted Gallonage.

The Under Deducted Gasoline Gallonage exported out of Iowa as shown by Schedule No. 11 aggregates 206,467 net gallons after provision has been made for evaporation and loss of 3%, and the Tax to be deducted on above gallonage totals $6,194.01.

Schedule No. 12 shows two cars, one of gasoline and one of casinghead gasoline, which according to all available records were unloaded at the Refinery and Tax paid to the State of Iowa. As the gasoline from the Refinery was taxed as it was shipped out, the net gallonage as shown by this schedule of 15,766 gallons and Tax of $472.98 was deducted from total Tax due in order not to duplicate.

Tax paid in error to Iowa and Nebraska is shown in Schedule No. 13. Five tank cars were reported in error, according to all available information, to Iowa, three cars in duplicate and two cars of Kerosene from Anderson-Prichard Company, aggregating 38,976 net gallons over reported, or a Tax to be deducted from the total amount due of $1,169.28.

One tank car was reported in error, according to all available information, to Nebraska, which was a car of Kerosene from the Refinery. The net gallonage over reported was 7,923, and a Tax to be deducted from the total amount due of $316.92.

Gallonage Differences

Gasoline imported into the State of Iowa should be reported to the State Treasurer giving the date of receipt, unloading point, car number and invoiced gallonage of each tank car, the State Tax being computed on invoiced gallonage.

From the analysis of Refinery Shipments it was noted that there were differences between invoiced gallonage and gallonage as reported to the State of Iowa, which have been set out in Schedule No. 4. The Net Unreported Gallonage aggregates 18,295 gallons after provision has been made for evaporation and loss of 3%, and Tax due on above gallonage of $548.85.

From the analysis of purchase invoices, etc., it was noted that there were differences between invoiced gallonage and gallonage as reported to the State of Iowa, which have been set out in Schedule No. 5. The Net Unreported Gallonage aggregate 36,174 gallons after provision has been made for evaporation and loss of 3%, and Tax due on above gallonage of $1,085.22.

Tax Collected—Not Reported

Gasoline sold to customers in tank cars and in tank lots at the Refinery, billed to the customers including tax, and tax payment to the State of Nebraska not being located, is set out in Schedule No. 9. From the analysis of Refinery shipments and Purchase invoices together with rebilling invoices of the Company, it was noted that 123,386 net gallons, after provision had been made for evaporation and loss of 3%, were unreported, and Tax was due to the State of Nebraska on above gallonage amounting to $4,935.44. It was also noted that the tax collected from the customers was $5,048.96, as compared with the amount payable of $4,935.44, which has been computed with evaporation deduction.

[fol. 250] ● Direct Shipments

The term "Direct Shipments" is used to indicate carload shipments of Gasoline made from the oil fields direct to customers and dealers of the Company. These were checked to Gasoline Tax reports made to either Iowa or Nebraska by the dealers or customers. We were unable to locate at the office of the Treasurer of the State of Iowa, reports covering the following shipments into Iowa:

Date of invoice	Car number	Gallonage	Destination
Jan. 31, 1929	N.A.TX 5000	8,139	J. & S. Filling Station—Council Bluffs
Aug. 2, 1929.	" 5110	7,966	Whiteway Oil Co.—Perry, Iowa
Aug. 6, 1929	" 15152	7,962	Holton Oil Co.—Clinton, Iowa
Aug. 19, 1929	" 1714	8,006	Cornbelt Motor Co.—Orange City, Ia.
Sept. 6, 1929	" 7805	8,002	Mutual Oil Co.—Northboro, Ia.
Oct. 20, 1929	" 5896	8,010	" " " " "
Jan. 17, 1930	" 5909	8,184	" " " " "
Sept. 23, 1929	" 5901	7,985	Commerce Oil Co.—Rock Valley, Ia.
Oct. 13, 1929	" 4258	8,060	John Koppen, Buffalo Center, Ia.
Nov. 26, 1930	" 7803	8,137	Farm Bureau Service Co.—Danville, Ia.
Jan. 16, 1930	" 7465	8,146	Co-Operative Gas & Oil Co.—Sioux Center.

In view of the fact that the reports of the above consignees could not be located, we have not computed the tax on these cars, as the reports may have been misplaced. These should be checked out, however, and if not reported, the tax should be computed and included in the final demand.

In checking reports made to the State of Nebraska covering Direct Shipments, we were unable to find the cars reported as listed in Schedule No. 10. There are 15 cars included, aggregating a tax due to the State of Nebraska of $3,878.58, which should be paid either by the consignee or the MonaMotor Oil Co.

We show on Schedule No. 3 four cars of gasoline shipped from the oil fields direct to MonaMotor Oil Co. at Council Bluffs and Mallard, Iowa, which we cannot find as having been reported for Tax purposes. The net gallonage unreported aggregate 28,071 gallons and a tax due of $842.13.

Miscellaneous Gasoline Receipts in Council Bluffs

From our analysis of Council Bluffs Bulk records we found receipts of Gasoline Gallonage that we were unable to trace from point of original shipment or source. As these items were included in their own records as receipts and as we have been unable to find any record of this gallonage having been reported for tax purposes, we have computed the tax thereon and are including same in this Report under Schedule No. 6. The net gallonage is 26,205 gallons with a tax amounting to $786.15 due to the State of Iowa.

(Here follows Exhibit A, side folio 251)

Gasoline Ta:

Audit

C

Statement of Unpaid Gasoline Taxes on Gasoline Imported Into or Pro

Description	Detailed in schedule No
Inter-State shipments by truck to Iowa	1
Refinery Shipments (Tank Cars) Not Reported	2
Direct Shipments (Tank Cars) Not Reported	3
Gallonage Differences on Cars Reported—Refinery	4
Gallonage Differences on Cars Reported—Direct Shipments	5
Gallonage into Council Bluffs that could not be traced to shipper	6
Deductions:	
Inter-State Shipments out of Iowa in excess of Deductions taken on State Reports	11
Cars Unloaded at Refinery—Reported to Iowa	12
Cars Reported—In Duplicate or Kerosene	13
Net Amount Due to Iowa	
Omaha Bulk—Gallonage to Nebraska	7
Deduct: Gallonage Reported	7
Gallonage Not Reported as Omaha Bulk	
Deduct:	
Gasoline and Casing Head Cars Unloaded at Refinery and Reported to Nebraska	14
Cars Reported to Nebraska which were Empty or contained Commodities other than Gasoline	15
Evaporation and Loss	
Net Gallonage Not Reported	7
Inter-State Shipments by Truck to Nebraska	8
Tax Collected from Customers on Shipments and not reported to Nebraska	9
Deduction:	
Car reported containing Kerosene	13
Addition:	
Gasoline Shipments to Dealers in Nebraska on which no record of tax payment can be located	10
Net Amount Due to Nebraska	

EXHIBIT "A"

State of Iowa

Tax Department—State Treasurer

udit of MonaMotor Oil Co.

Council Bluffs, Iowa

Produced in States of Iowa and Nebraska for Period from January 1, 1929 to March 31, 1932

Iowa

ed in e No.	Net gallonage	Tax	Total
	610,978	18,329.34	
	349,986	10,498.08	
	28,071	842.13	
	18,295	548.85	
	36,174	1,085.22	
	26,205	786.15	
	1,069,659	32,089.77	32,089.77
	206,467	6,194.01	
	15,766	472.98	
	38,976	1,169.28	
	261,209	7,836.27	7,836.27
	808,450	24,253.50	24,253.50

Recapitulation

Iowa—Due from MonaMotor Oil Co	24,253.50
Nebraska—Due from Mona-Motor Oil Co	36,507.42
Total Due from Mona-Motor Oil Co	60,760.92
Nebraska—Due from Authorized Dealers	3,878.58
	64,639.50

Nebraska

	Net Gallonage	Tax	Total
4,763,861			
3,155,801			
	1,608,060		
891,834			
180,441			
	1,072,375		
	535,785		
	16,073		
	519,712	20,788.48	
	277,123	11,100.42	
	123,386	4,935.44	
	920,221	36,824.34	
	7,923	316.92	
	912,298	36,507.42	36,507.42
	115,723x	3,878.58	3,878.58
	1,028,021	40,386.00	40,386.00

[fol. 252]

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of Mona Motor Oil Co.

Council Bluffs, Iowa

Schedule No. 1

Consolidated Statement of Inter-State Gasoline Shipments by Trucks Into Iowa for Period from January 1, 1929 to March 31, 1932

Year	Month	Shipped from	Unloading Point: Council Bluffs	Sioux City	Shenandoah	Oakland	Dunlap	Whiting	Iowa at large	Total	Reported to Iowa	Gallonage unreported Iowa
1929	January	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	February	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	March	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	April	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	May	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	June	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	July	Omaha Bulk	.....	.....	.....	.....	.....	.....	4,272	4,272	4,272	.....
	August	" "	.....	.....	.....	.....	.....	.....	4,354	4,354	4,054	300
	September	" "	4,600	.....	.....	.....	.....	.....	5,646	10,246	3,590	6,656
	October	" "	2,595	.....	.....	.....	.....	.....	4,788	7,383	3,346	4,037
	November	" "	5,333	.....	.....	.....	.....	.....	2,916	2,916	.....	2,916
	December	" "	5,333	.....	.....	.....	.....	.....	3,090	8,423	.....	8,423
	Total		12,528	.....	.....	.....	.....	.....	25,066	37,594	15,262	22,332

[fol. 253]

1930	January	Omaha Bulk	6,091	.....	.....	.....	.....	.....	6,052	12,143	.....	12,143
	February	" "	5,370	.....	.....	.....	.....	.....	2,963	8,333	.....	8,333
	March	" "	8,311	.....	.....	.....	.....	.....	2,651	10,962	.....	10,962

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co.

Council Bluffs, Iowa

Schedule No. 1—Continued

Consolidated Statement of Inter-State Gasoline Shipments by Trucks Into Iowa for Period from January 1, 1929 to March 31, 1932

Year	Month	Shipped from	Unloading Point: Council Bluffs	Sioux City	Shenandoah	Oakland	Dunlap	Whiting	Iowa at large	Total	Reported to Iowa	Gallonage unreported Iowa
	April	" "	10,779	.....	.....	.....	.....	.....	4,154	14,933	5,764	9,169
	May	" "	27,747	.....	.....	.....	.....	.....	4,872	32,682	.....	32,682
	June	" "	27,612	.....	.....	63	.....	.....	5,328	.....	.....	.....
	July	Refinery	5,630	.....	.....	1,360	.....	.....	.....	39,930	.....	39,930
	August	Omaha Bulk	30,983	.....	.....	.....	.....	.....	5,757	36,790	.....	36,790
	September	" "	17,280	.....	.....	50	.....	.....	5,954	23,234	.....	23,234
	October	" "	19,153	.....	.....	.....	.....	.....	4,996	24,149	.....	24,149
	November	Nickerson Bulk	17,915	.....	.....	.....	.....	.....	7,783	.....	.....	.....
		Omaha Bulk	970	.....	.....	.....	.....	.....	.....	26,668	.....	26,668
	December	Nickerson Bulk	17,307	.....	.....	.....	.....	.....	8,844	.....	.....	.....
		Omaha Bulk	1,630	.....	.....	.....	.....	.....	.....	27,781	.....	27,781
	Total		20,267	.....	.....	.....	.....	.....	4,853	25,120	.....	25,120
			217,045	.....	.....	1,473	.....	.....	64,207	282,725	5,764	276,961

[fol. 254]

Year	Month	Shipped from	Unloading Point: Council Bluffs	Sioux City	Shenandoah	Oakland	Dunlap	Whiting	Milford	Iowa at large	Total	Reported to Iowa	Gallonage unreported Iowa
1931	January	Omaha Bulk	18,190	....	....	....	....	....	....	4,454		....	
		Nickerson Bulk	90	....	....	....	....	....	....	....	22,734	....	22,734
	February	Omaha Bulk	16,025	....	....	....	....	....	....	4,133		....	
		Nickerson Bulk	600	....	....	....	....	....	....	....	20,758	....	20,758
	March	Omaha Bulk	16,300	....	....	....	....	....	....	4,354		....	
		Nickerson Bulk	1,640	....	....	....	....	....	....	....	22,294	....	22,294
	April	Omaha Bulk	23,364	....	....	....	....	....	....	4,708		....	
		Nickerson Bulk	1,520	....	....	....	....	....	....	....	29,592	....	29,592
	May	Omaha Bulk	12,313	....	....	484	....	....	....	12,470		....	
		Nickerson Bulk	1,160	....	....	....	....	....	....	....	26,427	....	26,427
	June	Omaha Bulk	11,460	....	....	....	....	....	....	14,208		....	
		Nickerson Bulk	1,520	....	....	....	....	....	....	....	27,188	....	27,188
	July	Omaha Bulk	8,413	....	....	....	....	....	....	14,908		....	
		Nickerson Bulk	2,090	....	....	....	....	....	....	....	....	....	....
		Jackson, Minn.	....	....	....	....	....	....	616	....	26,027	....	26,027
	August	Omaha Bulk	11,336	....	....	....	....	....	....	12,054		....	
		Nickerson Bulk	570	....	....	....	....	....	....	....	....	....	....
		Refinery	6,280	....	5,520	4,135	1,840	....	....	4,750	46,485	....	46,485
	September	Omaha Bulk	10,173	....	....	....	....	....	....	11,654		....	
		Refinery	125	....	1,840	9,740	....	1,840	....	5,310	40,682	....	40,682
	October	Omaha Bulk	6,308	....	....	....	....	....	....	10,108		....	
		Refinery	....	1,840	1,840	....	....	1,840	....	....	21,936	....	21,936
[fol. 255]													
1931	November	Omaha Bulk	2,200	....	....	....	....	....	....	7,229	9,429	....	9,429
	December	Omaha Bulk	2,710	....	....	....	....	....	....	6,954		....	
		Nickerson Bulk	185	....	....	....	....	....	....	....	....	....	....
		Refinery	5,520	....	....	....	....	....	....	....	15,369	....	15,369
		Total	160,092	1,840	9,200	14,359	1,840	3,680	616	117,294	308,921	....	308,921

Schedule No. 1—Continued

Year	Month	Shipped from	Unloading Point: Council Bluffs	Sioux City	Shenandoah	Oakland	Dunlap	Whiting	Milford	Davenport	Iowa at large	Total	Gallonage Reported to Iowa	Gallonage Unreported Iowa
1932	January	Omaha Bulk	1.320								6.320	7.640		7.640
	February	" "	2.985								5.420	8.405		8.405
	March	" "	5.705								5.754			
		Milan Bulk Refinery								1.650				
						3.520					3.890	20.519	14.904	5.615
	Total		10.010			3.520				1.650	21.384	36.564	14.904	21.660

Summary

1929	12.528												
1930	217.045			1.473						25.066	37.594	15.262	22.332
1931	160.092	1.840	9.200	14.359	1.840	3.680	616			64.207	282.725	5.764	276.961
Three Months Ended March 31, 1932	10.010			3.520				1.650	21.384	36.564	14.904		308.921
													21.660
Total	399.675	1.840	9.200	19.352	1.840	3.680	616	1.650	227.951	665.804	35.930		629.874

Tax Computation

Unreported Gallonage	629.874
Evaporation and Loss (3%)	18.896
Net Gallonage on which Tax is Due	610.978
Amount of Tax, 3c per gallon on Net Gallonage	18.329.34

Accompanying and forming part of our Report of August 9, 1932 and subject to the comments contained therein.

fol. 256]

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of Mona Motor Oil Co. Council Bluffs, Iowa

Schedule No. 2

Tank Cars of Gasoline Not Reported to Iowa

Refinery Shipments

Car number	Date of invoice	No. of invoice	Invoiced gallonage	Destination	Commodity: Per sales records	Commodity: Per railroad records
November 1929:						
GATX 5477	11-18-29	R 16	8,207	Council Bluffs, Ia.	Gasoline	Gasoline
December 1929:						
MMKX 104	12-26-29	R 80	6,121	Council Bluffs, Ia.	Gasoline	Oil
March 1930:						
CHIX 1065	2-27-30	R 170	* 5,766	Council Bluffs, Ia.	Gasoline	Gas Oil
" 1065	3- 6-30	R 185	* 8,100	" " "	Gasoline	Lubricating Oil
" 1145	3-17-30	R 210	* 8,344	" " "	Gasoline	Gas Oil
" 1145	3-21-30	R 222	* 6,425	" " "	Gasoline	Gas Oil
" 1005	3-27-30	R 234	* 8,307	" " "	Gasoline	Wax Oil
* Gallonage as shown by Shipping Records.						
April 1930:						
CHIX 1065	3-31-30	R 243	8,269	Council Bluffs, Ia.	Gasoline	Wax Oil
GATX 23119	4-22-30	R 295	8,176	" " "	Gasoline	Gasoline
June 1930:						
MMKX 104	5-31-30	R 589	6,039	Council Bluffs, Ia.	Gasoline	Gasoline
GATX 6717	6-15-30	R 635	7,940	" " "	Gasoline	Gasoline
" 23119	6-23-30	R 659	8,000	" " "	Gasoline	Lubricating Oil
" 13293	6- 8-30	R 608	8,062	" " "	Gasoline	Oil
August 1930:	.....	.....	.....	.....	.....	.....

Schedule No. 2—Continued

Car number	Date of invoice	No. of invoice	Invoiced gallonage	Destination	Commodity: Per sales records	Commodity: Per railroad records
December 1930:						
GATX 13606	12-18-30	R 257	* 8,219	Council Bluffs, Ia.	Gasoline	Lubricating Oil
" 20142	12-27-30	R 272	8,352	" " "	Gasoline	Lubricating Oil
" 13606	12-27-30	R 273	8,309	" " "	Gasoline	Lubricating Oil
* Gallonage as shown by Shipping Records.						
February 1931:						
MMKX 103	2-10-31	R 349	6,143	Council Bluffs, Ia.	Gasoline	Lubricating Oil
March 1931:						
MMKX 103	2-27-31	R 409	6,126	Council Bluffs, Ia.	Gasoline*	Lubricating Oil
GATX 23666	3-6-31	R 426	8,214	" " "	Gasoline*	Lubricating Oil
(Carried Forward)			143,119			
[fol. 257]						
April 1931:						
GATX 11271	4-10-31	R 533	8,143	Council Bluffs, Ia.	Gasoline	Lubricating Oil
" 23535	4-10-31	R 536	8,130	" " "	Gasoline	Lubricating Oil
" 13293	4-12-31	R 541	8,113	" " "	B. B. Gasoline	Lubricating Oil
" 23535	4-17-31	R 554	8,073	" " "	B. B. Gasoline	*Lubricating Oil
May 1931:						
GATX 23535	4-30-31	R 607	8,114	Council Bluffs, Ia.	Gasoline	*Lubricating Oil
" 20142	5-2-31	R 613	8,100	" " "	Gasoline	*Lubricating Oil
BIGX 2825	5-6-31	R 618	8,073	" " "	Gasoline	*Lubricating Oil
" 2838	5-7-31	R 620	8,058	" " "	Gasoline	*Lubricating Oil
GATX 13293	5-7-31	R 621	8,099	" " "	Gasoline	*Lubricating Oil
" 23666	5-8-31	R 624	8,112	" " "	B. B. Gasoline	Lubricating Oil
" 14393	5-14-31	R 634	8,134	" " "	Gasoline	*Lubricating Oil

"	23535		5-22-31	R 650	8.115		
"	13456		5-23-31	R 651	8.080	" " "	B. B. Gasoline *Lubricating Oil
"	23535		5-29-31	R 660	8.094	" " "	Gasoline *Lubricating Oil
June 1931:						" " "	Gasoline *Lubricating Oil
GATX	14271						
"	23666		6- 2-31	R 670	8.109	Council Bluffs, Ia.	Gasoline *Lubricating Oil
"	23535		6- 3-31	R 674	8.061	" " "	B. B. Gasoline *Lubricating Oil
"	14271		6- 8-31	R 686	8.033	" " "	B. B. Gasoline. *Lubricating Oil
"	23666		6- 8-31	R 687	8.076	" " "	Gasoline *Lubricating Oil
"	13293		6-10-31	R 695	8.023	" " "	Gasoline *Lubricating Oil
"	6717		6-12-31	R 700	8.051	" " "	Gasoline *Lubricating Oil
"	23535		6-13-31	R 702	7.954	" " "	Gasoline *Lubricating Oil
"	13293		6-17-31	R 706	7.988	" " "	B. B. Gasoline *Lubricating Oil
"	6717		6-25-31	R 725	7.941	" " "	Gasoline *Lubricating Oil
"	23666		6-22-31	R 717	7.930	" " "	Gasoline *Lubricating Oil
July 1931:			6-26-31	R 726	7.994	" " "	B. B. Gasoline *Lubricating Oil
GATX	23666						
"	23666		7- 3-31	R 735	8.032	Council Bluffs, Ia.	B. B. Gasoline *Ref. Oil
			7-27-31	R 762	8.010	" " "	Gasoline *Lubricating Oil
					360.759		

*See comments

Tax Computation

Unreported Gallonage	360.759
Evaporation and Loss (3%)	10.823
Net Gallonage on which tax is due	349.936
Amount of Tax—3¢ per gallon on Net Gallonage	10,498.08

[fol. 258] State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co.

Council Bluffs, Iowa

Schedule No. 3

Tank Cars of Gasoline Not Reported to Iowa

Direct Shipments

Car number	Date of invoice	Invoiced gallonage	Destination
NATX 7398	3-3-30	8,149	Council Bluffs, Iowa
" 15176	2-12-29	8,350	Mallard, Iowa
" 15222	9-21-29	4,524	Council Bluffs, Iowa
" 5977	7-9-30	7,916	" " "
		28,939	

Tax Computation

Unreported Gallonage	28,939
Evaporation and Loss (3%)	868
Net Gallonage on Which Tax is Due	28,071
Amount of Tax, 3¢ per Gallon on Net Gallonage	842.13

Accompanying and forming part of our Report of August 9, 1932 and subject to the Comments contained therein.

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co.

Council Bluffs, Iowa

Schedule No. 4

Gallonage Differences on Tank Cars Reported to Iowa
Refinery Shipments

Car number	Date of invoice	No. of invoice	Invoiced gallonage	Reported gallonage	Station where unloaded
November 1929:					
HMTX 1090	11-16-29	R11	8,363	8,229	Council Bluffs, Ia.
CHIX 1072	11-22-29	R21	8,382	8,123	" "
			16,745	16,352	
December 1929:					
MMKX 104	11-26-29	R28	6,161	6,049	Council Bluffs, Ia.
CHIX 1073	12-5-29	R46	8,321	8,123	" "
MMKX 104	12-9-29	R48	6,172	6,049	" "
MMKX 104	12-20-29	R71	6,201	6,049	" "
MMKX 104	12-30-29	R86	6,229	6,049	" "
			33,084	32,319	
January 1930:					
GATX 6176	12-31-29	R90	8,250	8,088	Council Bluffs, Ia.
CHIX 1073	1-2-30	R99	8,391	8,123	" "

MMKX	104	1- 4-30	R104	6,100	6,049	"	"
CHIX	1073	1- 7-30	R108	8,341	8,123	"	"
MMKX	104	1-17-30	R122	6,231	6,049	"	"
				37,313	36,432		
February 1930:							
CHIX	1065	1-31-30	R139	8,331	8,167	Council Bluffs, Ia.	
"	1065	2- 8-30	R146	6,889	8,167	"	"
				15,220	16,334		
April 1930:							
GATX	7142	4-14-30	R281	8,146	8,037	Council Bluffs, Ia.	
"	14015	4-15-30	R283	8,151	8,041	Dunlap, Ia.	
"	13293	4-27-30	R303	8,128	8,096	Council Bluffs, Ia.	
"	26034	4-16-30	R286	8,160	8,039	Cumberland, Ia.	
				32,585	32,313		
May 1930:							
GATX	14015	5- 1-30	R309	8,032	8,041	Council Bluffs, Ia.	
"	23119	5- 7-30	R323	8,158	8,096	"	"
MMKX	104	5-13-30	R334	6,071	6,005	"	"
GATX	14015	5-13-30	R336	8,118	8,041	Cumberland, Ia.	
(Carried Forward)				30,379	30,183		
[fol. 259]							
May 1930 (Cont'd) (Brought Forward)				30,379	30,183		
GATX	13293	5-17-30	R346	8,184	8,096	Council Bluffs, Ia.	
"	6717	5-19-30	R354	8,112	7,992	"	"
"	13293	5-20-30	R357	8,152	8,046	Dunlap, Ia.	
"	26034	5-22-30	R563	8,094	8,039	Council Bluffs, Ia.	
"	23119	5-24-30	R570	8,215	8,096	"	"
				71,136	70,452		
June 1930:							
GATX	13293	6-12-30	R627	8,062	8,046	Council Bluffs, Ia.	
"	6717	6-11-30	R621	7,990	7,992	"	"
				16,052	16,038		
July 1930:							
GATX	23119	6-30-30	R672	8,035	7,992	Council Bluffs, Ia.	
CHIX	1055	7-15-30	R714	8,065	8,090	"	"
"	1059	7-16-30	R721	8,038	8,049	"	"
GATX	23119	7-19-30	R729	7,973	7,963	Granville, Ia.	
"	13293	7-24-30	R741	8,021	8,096	Council Bluffs, Ia.	
"	23119	7-28-30	R747	7,964	8,096	"	"
				48,096	48,286		
August 1930:							
CHIX	1055	7-29-30	R753	8,176	7,976	Dunlap, Iowa	
GATX	6717	7-31-30	R762	7,908	7,931	Council Bluffs, Ia.	
"	13293	7-31-30	R761	8,024	7,892	Storm Lake, Ia.	
"	6717	8-13-30	R790	7,931	7,992	Council Bluffs, Ia.	
"	13293	8-23-30	R809	8,053	7,972	"	"
				40,092	39,763		

September 1930:							
GATX	13606	9- 3-30	R834	7,979	8,015	Council Bluffs, Ia.	
"	14271	9- 8-30	R845	8,055	8,034	"	"
"	13606	9-16-30	R870	8,043	8,016	"	"
				24,077	24,065		
October 1930:							
GATX	6717	10- 6-30	R112	8,028	7,992	Sioux City, Ia.	
"	13293	10- 8-30	R117	8,132	8,096	Council Bluffs, Ia.	
"	14271	10-14-30	R139	8,177	8,102	Dunlap, Ia.	
"	13293	10-18-30	R147	8,198	8,106	Sioux City, Ia.	
"	20142	10-20-30	R152	8,183	8,088	Council Bluffs, Ia.	
				40,718	40,384		
November 1930:							
GATX	6717	10-28-30	R161	8,084	7,992	Dunlap, Ia.	
"	14271	10-28-30	R163	8,189	8,102	Sioux City, Ia.	
"	13293	10-30-30	R165	8,254	8,096	Council Bluffs, Ia.	
"	13606	10-30-30	R166	8,218	8,075	"	"
"	13293	11- 1-30	R171	8,221	8,096	"	"
"	23666	11- 3-30	R172	8,186	8,084	Whiting, Ia.	
"	6717	11- 4-30	R174	8,067	7,992	Sioux City, Ia.	
"	13606	11- 6-30	R177	8,233	8,075	Storm Lake, Ia.	
"	20142	11- 8-30	R190	8,290	8,088	Council Bluffs, Ia.	
"	14271	11-12-30	R193	8,245	8,102	"	"
"	13293	11-14-30	R195	8,214	8,096	"	"
"	20142	11-18-30	R202	8,180	8,088	"	"
"	13606	11-18-30	R203	8,152	8,075	Storm Lake, Ia.	
"	14271	11-18-30	R204	8,179	8,102	Sioux City, Ia.	
"	23666	11-19-30	R206	8,140	8,048	Dunlap, Ia.	
"	5491	11-21-30	R213	8,248	8,077	Whiting, Ia.	
"	13293	11-24-30	R215	8,205	8,096	Council Bluffs, Ia.	
				139,302	137,284		
December 1930:							
GATX	20142	11-28-30	R223	8,226	8,088	Sioux City, Ia.	
"	14271	11-28-30	R224	8,277	8,102	Carroll, Ia.	
"	23535	11-28-30	R225	8,231	8,078	Storm Lake, Ia.	
"	13606	12- 6-30	R238	8,267	8,075	Sioux City, Ia.	
"	20142	12- 6-30	R239	8,264	8,088	Dunlap, Ia.	
"	14271	12- 8-30	R242	8,292	8,102	Council Bluffs, Ia.	
"	5576	12-14-30	R247	8,227	8,086	Sioux City, Ia.	
"	6557	12-14-30	R248	8,211	8,082	Fort Dodge, Ia.	
"	5800	12-16-30	R253	8,255	8,106	Storm Lake, Ia.	
"	23535	12-19-30	R259	8,277	8,078	Whiting, Ia.	
"	23666	12-22-30	R262	8,289	8,084	Council Bluffs, Ia.	
"	5624	12-24-30	R265	8,570	8,093	Manson, Ia.	
				99,386	97,062		

* As shown by shipping records.

[fol. 260]

Car number		Date of invoice	No. of invoice	Invoiced gallonage	Reported gallonage	Station where unloaded
January 1931:						
GATX	14271	12-27-30	R275	8,501	8,102	Storm Lake, Iowa
"	13606	12-31-30	R281	8,287	8,075	Milford, Ia.
SCNX	685	1- 4-31	R286	8,291	8,110	Sioux City, Ia.
GATX	20142	1- 4-31	R287	8,239	8,088	Fonda, Ia.
"	14271	1- 6-31	R289	8,285	8,102	Dunlap, Ia.
MMKX	104	1- 8-31	R290	6,193	6,048	Council Bluffs, Ia.
GATX	14271	1-14-31	R296	8,229	8,102	" "
"	5832	1-14-31	R297	8,260	8,102	Whiting, Ia.
"	20142	1-14-31	R299	8,345	8,088	Fort Dodge, Ia.
MMKX	102	1-15-31	R301	6,198	6,052	Council Bluffs, Ia.
GATX	6948	1-15-31	R303	8,351	8,094	Jefferson, Ia.
MMKX	103	1-16-31	R306	6,122	6,052	Council Bluffs, Ia.
GATX	6579	1-17-31	R307	8,307	8,096	Storm Lake, Ia.
"	23666	1-21-31	R312	8,281	8,084	Sioux City, Ia.
"	14271	1-21-31	R313	8,261	8,102	Gowrie, Ia.
MMKX	102	1-24-31	R319	6,171	6,052	Council Bluffs, Ia.
GATX	6699	1-24-31	R320	8,223	8,085	Fonda, Ia.
MMKX	103	1-27-31	R323	6,202	6,052	Council Bluffs, Ia.
SCNX	627	1-27-31	R325	8,250	8,123	Sioux City, Ia.
				146,996	143,609	
February 1931:						
SCNX	720	1-28-31	R327	8,059	8,114	Dunlap, Ia.
GATX	23119	1-31-31	R332	8,196	8,096	Granville, Ia.
"	23119	1-18-31	R336	8,296	8,096	Sioux City, Ia.
"	20142	2- 3-31	R339	8,208	8,088	Storm Lake, Ia.
"	14271	2- 6-31	R341	8,244	8,102	Gowrie, Ia.
SCNX	704	2- 7-31	R342	8,260	8,110	Whiting, Ia.
"	654	2- 9-31	R344	8,265	8,142	Peterson, Ia.
GATX	5263	2- 9-31	R346	8,216	8,083	Manson, Ia.
"	23119	2-12-31	R357	8,232	8,096	Council Bluffs, Ia.
"	5328	2-17-31	R368	8,279	8,090	Fonda, Ia.
MMKX	102	2-17-31	R370	6,168	6,048	Council Bluffs, Ia.
GATX	20142	2-19-31	R377	8,269	8,088	" "
"	14271	2-19-31	R378	8,261	8,102	" "
"	6517	2-19-31	R379	8,354	8,072	Storm Lake, Ia.
SCNX	552	2-21-31	R385	8,283	8,130	Sioux City, Ia.
GATX	13606	2-21-31	R386	8,195	8,075	Fort Dodge, Ia.
"	23666	2-23-31	R389	8,191	8,084	Cumberland, Ia.
"	20142	2-23-31	R391	8,231	8,088	Dunlap, Ia.
"	14271	2-23-31	R392	8,230	8,102	Gowrie, Ia.
MMKX	102	2-23-31	R393	6,131	6,047	Council Bluffs, Ia.
"	104	2-23-31	R394	6,156	6,048	" "
BIGX	2410	2- 9-31	R345	8,184	8,095	Cumberland, Ia.
				174,908	171,996	
March 1931:						
GATX	23535	2-25-31	R401	8,189	8,078	Jefferson, Ia.
"	23119	2-25-31	R402	8,230	8,096	Carroll, Ia.
"	20142	3- 3-31	R416	8,230	8,088	Whiting, Ia.
"	5308	3- 5-31	R419	8,229	8,088	Sioux City, Ia.
"	6970	3- 5-31	R421	8,237	8,086	Storm Lake, Ia.
"	14271	3- 6-31	R425	8,221	8,102	Milford, Ia.
"	5477	3-10-31	R436	8,265	8,082	Rembrandt, Ia.
"	5328	3-12-31	R442	8,240	8,089	Peterson, Ia.
"	6717	3-14-31	R445	8,138	7,992	Sioux City, Ia.
"	23535	3-16-31	R448	8,200	8,078	Council Bluffs, Ia.
"	13606	3-17-31	R453	8,197	8,075	" "
"	14271	3-17-31	R454	8,225	8,102	Whiting, Ia.

Car number	Date of invoice	No. of invoice	Invoiced gallonage	Reported gallonage	Station where unloaded
SCNX 713	3-19-31	R460	8,207	8,112	Carroll, Ia.
GATX 20142	3-21-31	R465	8,169	8,088	Cumberland, Ia.
" 23535	3-23-31	R470	8,190	8,078	Fort Dodge, Ia.
" 23119	3-23-31	R471	8,202	8,096	Storm Lake, Ia.
" 6717	3-23-31	R472	8,092	7,992	Dunlap, Ia.
" 14271	3-25-31	R478	8,193	8,102	Milford, Ia.
" 6028	3-26-31	R480	8,204	8,101	Fonda, Ia.
" 6961	3-26-31	R481	8,180	8,089	Sioux City, Ia.
" 23666	3-17-31	R452	8,202	8,084	
			172,240	169,698	
April 1931:					
MMKX 103	3-28-31	R490	6,133	6,050	Rembrandt, Ia.
GATX 23119	3-30-31	R492	8,238	8,096	Storm Lake, Ia.
SCNX 665	3-30-31	R493	8,276	8,133	Manson, Ia.
GATX 5680	3-30-31	R494	8,278	8,125	Granville, Ia.
BIGX 724	3-30-31	R495	8,164	8,044	Council Bluffs, Ia.
GATX 13606	3-30-31	R496	8,216	8,075	Carroll, Ia.
BIGX 755	4-1-31	R507	8,173	8,044	Council Bluffs, Ia.
" 712	4-1-31	R508	8,157	8,041	" "
GATX 23535	4-1-31	R509	8,185	8,078	Gowrie, Ia.
" 6717	4-3-31	R514	8,125	7,992	Dunlap, Ia.
" 14393	4-4-31	R516	8,267	8,120	Milford, Ia.
" 23666	4-7-31	R520	8,216	8,084	Jefferson, Ia.
" 13606	4-7-31	R523	8,163	8,075	Sioux City, Ia.
" 20142	4-7-31	R525	8,177	8,088	Cumberland, Ia.
" 23119	4-7-31	R526	8,155	8,096	Whiting, Ia.
MTCX 2129	4-10-31	R532	8,115	8,044	Rembrandt, Ia.
GATX 13456	4-13-31	R540	8,130	8,072	Fort Dodge, Ia.
" 23666	4-13-31	R542	8,118	8,078	Cumberland, Ia.
" 6717	4-15-31	R544	8,030	7,992	Fonda, Ia.
" 14393	4-15-31	R545	8,114	8,096	Sioux City, Ia.
(Carried Forward)			161,430	159,423	
[fol. 261]					
April 1931: (Cont'd)					
(Brought Forward)			161,430	159,423	
GATX 14271	4-15-31	R546	8,091	8,102	Milford, Ia.
" 20142	4-16-31	R550	8,061	8,088	Granville, Ia.
" 23119	4-16-31	R551	8,057	8,096	Mallard, Ia.
" 13293	4-17-31	R553	8,081	8,096	Dunlap, Ia.
SCNX 694	4-18-31	R560	8,103	8,110	Sioux City, Ia.
MMKX 104	4-21-31	R564	6,067	6,048	Council Bluffs, Ia.
GATX 23535	4-21-31	R566	8,109	8,078	Sioux City, Ia.
" 13456	4-21-31	R567	8,103	8,072	Council Bluffs, Ia.
" 6717	4-23-31	R574	8,018	7,992	" "
" 14393	4-24-31	R576	8,168	8,120	Gowrie, Ia.
" 13293	4-25-31	R588	8,177	8,096	Milford, Ia.
" 23119	4-29-31	R605	8,162	8,096	Council Bluffs, Ia.
" 13606	4-29-31	R606	8,113	8,075	" "
			264,741	262,492	
May 1931:					
SCNX 619	4-28-31	R597	8,182	8,099	Dunlap, Ia.
GATX 6717	4-27-31	R601	8,060	7,992	" "
" 23666	4-29-31	R602	8,152	8,084	Fort Dodge, Ia.
SCNX 663	4-29-31	R604	8,227	8,140	Whiting, Ia.
" 683	5-2-31	R614	8,182	8,110	Sioux City, Ia.

Car number		Date of invoice	No. of invoice	Invoiced gallonage	Reported gallonage	Station where unloaded
June 1931:						
GATX	6462	5- 8-31	R623	8,179	8,125	" " "
SCNX	627	5-18-31	R640	8,150	8,188	Peterson, Ia.
"	703	5-18-31	R641	8,160	8,175	Council Bluffs, Ia.
				65,292	64,913	
GATX	5849	6- 4-31	R677	8,077	8,104	Storm Lake, Ia.
September 1931:						
GATX	20142	9-21-31	R889	8,050	7,933	Council Bluffs, Ia.
"	23119	9-21-31	R891	8,057	8,018	" "
"	6717	9-28-31	R902	8,018	7,992	" "
				24,125	23,943	
October 1931:						
GATX	23666	9-30-31	R911	8,113	8,084	Council Bluffs, Ia.
"	6717	10- 7-31	R914	8,005	7,992	" "
"	23666	10- 9-31	R917	8,113	8,084	" "
"	13606	10-12-31	R920	8,102	8,075	" "
"	6717	10-15-31	R927	8,055	7,992	" "
				40,388	40,227	
March 1932:						
GATX	6717	3-11-32	R1023	8,105	7,992	Council Bluffs, Ia.
REPX	191	3-22-32	R1024	8,217	8,076	" "
				16,322	16,068	

[fol. 262]

Summary

Month and year	Invoiced gallonage	Reported gallonage	Gallonage reported over or under
November 1929	16,745	16,352	393
December 1929	33,084	32,319	765
January 1930	37,313	36,432	881
February 1930	15,220	16,334	1,114
April 1930	32,585	32,213	372
May 1930	71,136	70,452	684
June 1930	16,052	16,038	14
July 1930	48,096	48,286	190
August 1930	40,092	39,763	329
September 1930	24,077	24,065	12
October 1930	40,718	40,384	334
November 1930	139,302	137,284	2,018
December 1930	99,386	97,062	2,324
January 1931	146,996	143,609	3,387
February 1931	174,908	171,996	2,912
March 1931	172,240	169,698	2,542
April 1931	264,741	262,492	2,249
May 1931	65,292	64,913	379
June 1931	8,077	8,104	27
September 1931	24,125	23,943	182

Month and year	Invoiced gallonage	Reported gallonage	Gallonage reported over or under
October 1931	40,388	40,227	161
March 1932	16,322	16,068	254
	1,526,895	1,508,034	18,861

Tax Computation

Unreported Gallonage	18,861
Evaporation and Loss (3%)	566
Net Gallonage on which tax is due	18,295
Amount of Tax, 3¢ per gallon on Net Gallonage	548.85

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of Mona Motor Oil Co.

Council Bluffs, Iowa

Schedule No. 5

Gallonage Difference on Tank Cars Reported to Iowa in January, 1929

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
SPAX	454	1-5-29	8,124	8,076	Sioux City
NATX	1204	1-11-29	8,167	8,109	Dunlap
CSMX	141	1-18-29	8,216	8,201	Sioux City
NATX	5174	12-29-28	8,063	8,058	Council Bluffs
CHIX	1071	12-27-28	8,159	8,120	Sioux City
			40,729	40,564	

In February, 1929

GATX	25274	2-12-29	8,209	8,152	Rembrandt
MMKX	104	2-15-29	6,054	6,048	Aspinwall
SPAX	514	1-30-29	8,113	8,089	Jefferson
"	422	1-30-29	8,172	8,088	Carroll
"	464	1-30-29	8,085	8,069	Newell
"	447	2-4-29	8,148	8,083	Milford
CHIX	1074	2-4-29	8,190	8,129	Storm Lake
"	1073	2-21-29	8,204	8,123	Council Bluffs
GATX	13605	2-7-29	8,138	8,077	" "
PARX	465	2-6-29	8,251	8,123	Spencer, Iowa
"	860	2-6-29	8,220	8,093	Sioux City, Iowa
NATX	1490	2-4-29	8,155	8,097	Council Bluffs
"	5086	2-4-29	8,117	8,053	Storm Lake
"	1995	2-5-29	8,173	8,109	Milford, Iowa
"	5079	2-9-29	8,201	8,060	Gowrie
"	7859	2-12-29	8,182	8,084	Jefferson
"	495	2-13-29	8,119	8,041	Fonda
"	7854	2-14-29	8,159	8,085	Manson
"	7938	2-14-29	8,235	8,156	Council Bluffs
"	13511	2-13-29	8,239	8,180	Council Bluffs
"	1402	2-16-29	8,285	8,186	Council Bluffs
GATX	20988	2-17-29	8,143	8,090	Council Bluffs
			177,732	176,215	

[fol. 263]

Gallonage Difference on Tank Cars reported to Iowa in March, 1929

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
PARX	372	2-22-29	8,260	8,142	Storm Lake
"	1146	3-14-29	8,158	8,119	Newell
CHIX	1072	2-20-29	8,204	8,123	Gowrie
SPAX	422	3- 3-29	8,112	8,088	Mallard
MMKX	104	3-10-29	6,072	6,048	Ft. Dodge
GATX	20987	3-13-29	8,092	8,084	Sioux City
PARX	637	2-25-29	8,237	8,100	Council Bluffs
"	1180	3- 1-29	8,221	8,118	" "
"	879	3-20-29	8,110	8,081	" "
GATX	7533	3-20-29	8,186	8,190	" "
NATX	818	2-14-29	8,239	8,150	Rembrandt
"	7820	2-19-29	8,154	8,085	Ft. Dodge
"	740	2-12-29	8,163	8,065	Council Bluffs
"	1435	2-24-29	8,118	8,060	" "
"	4220	2-24-29	7,359	7,297	" "
NATX	7914	3- 5-29	8,183	8,159	Council Bluff
"	5004	3- 6-29	8,065	8,055	Storm Lake
"	1469	3-13-29	8,153	8,133	Council Bluffs
"	827	3-13-29	8,054	8,035	" "
"	5213	3-13-29	8,076	8,057	Jefferson
"	5096	3-13-29	8,079	8,060	Gowrie
"	736	3-15-29	8,089	8,065	Fonda
"	774	3-16-29	8,105	8,100	Ft. Dodge
"	5091	3-18-29	8,050	8,060	Council Bluffs
"	1232	3-18-29	8,142	8,147	" "
PSPX	2385	3-16-29	8,130	8,091	" "
			208,811	207,712	

Gallonage Difference on Tank Cars Reported to Iowa in April, 1929

PARX	923	3-29-29	8,152	8,132	Aspinwall
"	1198	3-30-29	8,139	8,119	Gowrie
"	481	3-30-29	8,145	8,125	Carroll
"	964	4- 3-29	8,144	8,125	Jefferson
"	309	3-27-29	8,073	8,068	Council Bluffs
MMKX	104	3-29-29	6,036	6,048	" "
CHIX	1072	4- 8-29	8,070	8,123	" "
MMKX	104	4-19-29	6,033	6,048	" "
MTCX	2217	3-27-29	8,117	8,127	" "
NATX	5195	3-27-29	8,069	8,059	" "
NATX	5011	3-29-29	8,104	8,065	" "
"	1243	3-29-29	8,155	8,116	Ft. Dodge
LDLX	1459	3-30-29	8,144	8,129	Storm Lake
NATX	5238	4- 5-29	8,035	8,059	Council Bluffs
"	736	4- 5-29	8,041	8,065	" "
"	5249	4-16-29	8,034	8,048	" "
"	7829	4-16-29	8,048	8,083	" "
"	5033	4-22-29	8,034	8,063	" "
			141,573	141,602	

In May, 1929

Car number		Date of invoice	No. of invoice	Invoiced gallonage	Reported gallonage	Station where unloaded
CHIX	1074	4-30-29		8,080	8,129	Council Bluffs

In June, 1929

NATX	987	6-16-29		8,119	8,210	Council Bluffs
SPAX	368	5-24-29		8,059	8,015	" "
MMKX	104	6- 4-29		6,006	6,000	" "
CHIX	f073	6-12-29		8,042	8,075	" "
SPAX	515	6-22-29		7,988	8,010	" "
NATX	5282	5-26-29		8,040	7,996	" "
"	5091	5-26-29		8,055	8,010	" "
"	206	5-26-29		8,012	7,981	" "
"	889	5-26-29		8,173	8,076	" "
"	7898	5-31-29		8,034	8,033	" "
"	7834	6- 8-29		7,982	8,031	" "
"	7815	6- 8-29		7,997	8,030	" "
"	495	6-20-29		7,944	7,980	" "
PGX	1602	6-12-29		7,938	7,975	" "
NATX	5003	6-17-29		7,959	8,011	" "
				118,348	118,433	

[fol. 264] Gallonage Difference on Tank Cars Reported to Iowa in July, 1929

PARX	402	6-25-29		8,059	8,025	Council Bluffs
GATX	20363	7- 1-29		8,024	8,010	" "
"	7634	7- 9-29		8,108	8,102	" "
CHIX	1073	7-17-29		8,038	8,023	" "
SPAX	506	7-24-29		7,967	7,984	" "
NATX	5162	6-22-29		7,935	7,962	" "
"	313	6-29-29		7,950	8,073	" "
"	5113	6-29-29		7,935	7,962	" "
"	5006	6-30-29		7,930	7,950	" "
"	15201	6-30-29		8,000	8,014	" "
CSMX	212	6-30-29		7,955	7,973	" "
"	110	6-30-29		8,088	8,103	" "
"	119	6-30-29		8,096	8,111	" "
NATX	15324	7- 7-29		8,025	8,004	" "
"	1098	7-12-29		7,941	7,983	" "
"	7808	7-12-29		7,946	7,983	" "
"	8053	7-14-29		8,028	8,047	" "
"	5297	7-17-29		7,969	7,967	Milford
"	774	7-18-29		7,967	8,000	Council Bluffs
"	874	7-18-29		7,980	8,013	" "
"	1435	7-23-29		7,918	7,960	" "
				167,859	168,249	

Gallonage Difference on Tank Cars Reported to Iowa in August, 1929

CHIX	1072	8- 1-29		8,026	8,023	Council Bluffs
SPAX	512	8-10-29		7,958	7,947	" "
CHIX	1072	8-24-29		8,001	8,023	" "
NATX	5222	7-25-29		7,922	7,920	" "
"	5086	7-27-29		7,960	7,950	" "
"	7808	8- 3-29		7,955	7,950	" "
"	7870	8- 5-29		7,973	7,996	" "
ALTX	103	8-10-29		8,018	8,047	" "
NATX	7891	8-10-29		7,957	7,985	" "
ALTX	100	8-12-29		8,000	8,004	" "

Galloange Difference on Tank Cars Reported to Iowa in August, 1929—Continued

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
CYCX	8787	8-12-29	8,067	8,080	" "
NATX	5162	8-19-29	7,949	7,932	" "
OHRX	600	7-26-29	7,966	7,949	" "
NATX	7849	7-27-29	7,977	7,785	" "
RSPX	2278	8- 5-29	7,964	7,950	" "
			119,693	119,741	

In September 1929

NATX	7823	8-23-29	7,972	7,922	Manson
"	7831	8-31-29	7,955	7,960	Council Bluffs
"	5865	9- 8-29	7,968	8,027	" "
			23,895	23,909	

In October 1929

NATX	5958	10- 1-29	7,962	8,024	Council Bluffs

[fol. 265] Gallonage Difference on Tank Cars Reported to Iowa in November, 1929

CHIX	1072	11- 6-29	8,091	8,090	Ft. Dodge
MMKX	104	11- 5-29	6,063	6,048	Storm Lake
NATX	5124	11-12-29	8,087	8,063	Council Bluffs
RUTX	819	11- 1-29	8,099	8,107	" "
"	811	11- 9-29	8,107	8,017	" "
CHIX	1073	11- 9-29	8,107	8,103	" "
NATX	5747	10-25-29	8,031	8,045	" "
"	1402	10-29-29	8,196	8,186	Mallard
CHIX	1148	10-30-29	8,176	8,166	Milford
NATX	1430	10-30-29	8,080	8,065	Peterson
"	1257	11- 1-29	8,135	8,116	Sioux City
"	7864	11- 1-29	8,109	8,090	Gowrie
"	5719	11- 1-29	8,057	8,038	Dunlap
"	5201	11- 5-29	8,066	8,061	Fonda
"	5899	11- 5-29	8,062	8,048	Ft. Dodge
"	11126	11- 6-29	8,110	8,086	Manson
"	5234	11-11-29	8,067	8,053	Storm Lake
"	634	11-11-29	8,154	8,115	Jefferson
"	672	11-12-29	8,136	8,107	Algona
"	5909	11-20-29	8,106	8,048	Mallard
"	7817	11-20-29	8,152	8,094	Aspinwall
"	7416	11-20-29	8,094	8,036	Storm Lake
"	5866	11-20-29	8,106	8,048	Cumberland
"	824	10-25-29	8,158	8,168	Council Bluffs
			192,549	191,998	

Gallonage Difference on Tank Cars Reported to Iowa in December 1929

NATX	5942	12-10-29	8,102	8,034	Storm Lake
"	5817	12-20-29	8,195	8,049	Milford
"	718	12-19-29	6,166	6,085	Carroll
"	5924	12-19-29	8,195	8,040	Gowrie
NTCX	2213	12-10-29	8,170	8,131	Sioux City
MMKX	103	12- 4-29	6,109	6,050	Dunlap
NATX	7463	12- 9-29	8,120	8,042	Granville
"	7438	12- 9-29	8,093	8,035	Ft. Dodge
"	7940	12- 9-29	8,228	8,149	Peterson
"	7409	12-17-29	8,064	8,045	Manson
"	5972	12-17-29	8,051	8,037	Spencer

Gallonage Difference on Tank Cars Reported to Iowa in Dece
1929—Continued

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of
NATX	5113	12-18-29	8,101	8,062	Fonda
"	5670	12-18-29	8,091	8,052	Dunlap
"	7850	12-19-29	8,181	8,084	Sioux City
CHIX	1144	12-19-29	8,133	8,168	Carroll
NATX	4208	12-20-29	8,146	8,088	Storm Lake
GATX	25153	12- 7-29	8,126	8,078	Aspinwall
RUTX	808	12- 7-29	8,156	8,107	Fonda
STCX	9674	12-19-29	8,256	8,100	Council Bluffs
NATX	5276	12-13-29	8,070	8,041	" "
RUTX	9150	11-29-29	8,180	8,131	" "
NATX	7396	11-23-29	8,143	8,046	Gowrie
"	824	11-23-29	8,267	8,168	Milford
"	7405	11-25-29	8,156	8,049	Sioux City
"	7474	11-25-29	8,141	8,034	Fonda
"	7404	11-25-29	8,151	8,044	Rembrandt
"	5902	11-26-29	8,161	8,054	Storm Lake
"	7366	11-27-29	8,117	8,044	Council Bluffs
"	5821	11-30-29	8,131	8,054	Sioux City
			232,200	230,101	

[fol. 266] Gallonage Difference on Tank Cars Reported to Iowa in Janua

NATX	5838	12-31-29	8,116	8,058	Ft. Dodge, Iow
"	5941	1- 4-30	8,095	8,037	Rembrandt
"	5947	12-24-29	8,163	8,046	Mallard
"	5966	1-11-30	8,011	8,030	Ft. Dodge
"	7845	12-21-29	8,182	8,085	Cumberland
NATX	5019	12-24-29	8,105	8,066	Gowrie
"	5022	12-24-29	8,116	8,058	Milford
CHIX	1071	12-31-29	8,189	8,120	Jefferson
NATX	7940	1-12-30	8,257	8,149	Rembrandt
"	7381	1-12-30	8,140	8,028	Peterson
"	5866	1-12-30	8,160	8,048	Jefferson
"	7817	1-12-30	8,207	8,094	Granville
"	5881	1-12-30	8,170	8,058	Fonda
"	5092	1-13-30	8,154	8,057	Cumberland
"	5296	1-13-30	8,137	8,040	Storm Lake
"	1822	1-25-30	8,279	8,104	Sioux City
CHIX	1072	12-26-29	8,197	8,123	Sioux City
NATX	5929	1-24-30	8,204	8,049	Gowrie
"	5794	1-20-30	8,171	8,045	Storm Lake
"	7870	1-12-30	8,209	8,096	Milford
"	5765	1-12-30	8,157	8,045	Manson
"	7467	1-12-30	8,140	8,028	Creston
"	7455	1-12-30	8,159	8,047	Dunlap
"	5272	1-12-30	8,168	8,056	Sioux City
NATX	5811	1-15-30	8,227	8,052	Council Bluffs
"	5708	1- 2-30	8,103	8,045	" "
"	5816	12-30-29	8,097	8,049	" "
"	5700	1-23-30	8,186	8,040	" "
"	7858	1- 2-30	8,049	8,096	Storm Lake
"	5178	1- 7-30	8,146	8,057	Dunlap
"	1762	1- 8-30	8,188	8,109	Fonda
"	4229	1-10-30	8,179	8,100	Gowrie
"	5113	1-11-30	8,203	8,062	Mallard
"	7380	1-12-30	8,146	8,034	Council Bluffs
			277,410	274,211	

Gallonage Difference on Tank Cars Reported to Iowa in February, 1930

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
NATX	7891	1-31-30	8,202	8,085	Gowrie
"	7873	1-31-30	8,198	8,090	Fonda
"	1832	2- 4-30	8,220	8,112	Dunlap
"	5700	2-12-30	8,108	8,040	Aspinwall
"	5708	2-19-30	8,103	8,045	Storm Lake
"	7808	2- 8-30	8,147	8,083	Ft. Dodge
"	7396	2-10-30	8,153	8,046	Storm Lake
"	7847	2-15-30	8,117	8,088	Aspinwall
"	5216	2-17-30	8,115	8,057	Gowrie
"	7843	2-18-30	8,198	8,090	Sioux City
"	7940	2-18-30	8,188	8,149	Storm Lake
NTCX	2213	2-19-30	8,160	8,131	Sioux City
"	7413	2-19-30	8,074	8,045	Milford
NATX	5836	2-12-30	8,120	8,052	Council Bluffs
"	5222	2- 6-30	8,142	8,054	" "
"	5705	1-31-30	8,148	8,041	" "
"	5803	1-28-30	8,199	8,053	" "
CHIX	1143	2- 3-30	8,277	8,168	" "
NATX	5034	2-24-30	8,098	8,050	" "
			154,967	153,479	

[fol. 267]

Gallonage Difference on Tank Cars Reported to Iowa in March, 1930

NATX	5079	2-25-30	8,089	8,060	Cumberland
"	5817	2-26-30	8,097	8,049	Milford
"	7394	2-27-30	8,076	8,047	Storm Lake
"	5826	3-12-30	8,110	8,052	Gowrie
"	5996	3-14-30	8,087	8,048	Mallard
"	5768	3-14-30	8,073	8,054	" "
"	5823	3-13-30	8,104	8,046	Rembrandt
"	5751	3- 5-30	8,108	8,040	Jefferson
"	5940	3- 4-30	8,161	8,044	Shenandoah
"	5816	3- 4-30	8,166	8,049	Creston
"	5812	3- 4-30	8,175	8,058	Ft. Dodge
"	7365	2-21-30	8,057	8,038	Cumberland
CHIX	1062	2-24-30	8,196	8,171	Dunlap
NATX	1714	2-28-30	8,128	8,109	Rodman
"	7392	2-28-30	8,052	8,033	Fonda
"	7405	2-28-30	8,068	8,049	Ft. Dodge
"	7384	2-28-30	8,062	8,033	Shenandoah
"	5022	2-28-30	8,077	8,058	Gowrie
"	7391	2-28-30	8,063	8,044	Milford
CHIX	1143	3- 6-30	8,178	8,168	Dunlap
NATX	7448	3-13-30	8,057	8,038	Jefferson
"	7439	3-14-30	8,039	8,029	Granville
"	7401	3-14-30	8,050	8,040	Peterson
"	5908	3-17-30	8,031	8,045	Creston
"	5022	3-19-30	8,092	8,058	Cumberland
"	7426	3-19-30	8,077	8,043	Fonda
"	1723	3-19-30	8,139	8,105	Milford
CHIX	1150	3-21-30	8,191	8,171	Ft. Dodge
NATX	5242	3-24-30	8,072	8,053	Carroll
"	5124	3-15-30	8,073	8,063	Rembrandt
"	5794	3-11-30	8,113	8,045	Council Bluffs
"	5779	2-27-30	8,076	8,047	" "
CHIX	1149	3- 5-30	8,214	8,175	" "
NATX	5216	3-11-30	8,076	8,057	" "
"	5882	3-17-30	8,039	8,049	" "
"	5913	3-17-30	8,039	8,049	" "

Gallonage Difference on Tank Cars Reported to Iowa in March, 1930—Continued

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
NATX	1714	3-19-30	8,133	8,109	" "
"	5896	2-21-30	8,078	8,039	" "
"	5222	2-24-30	8,059	8,054	Dunlap
			315,775	314,519	

Gallonage Difference on Tank Cars Reported to Iowa in April, 1930

NATX	5776	4- 4-30	8,064	8,045	Fonda
"	5816	4-18-30	8,059	8,049	Dunlap
"	7428	3-24-30	8,060	8,041	"
GATX	13298	3-26-30	8,086	8,076	Storm Lake
NATX	7433	3-31-30	8,109	8,049	Shenandoah
"	4101	3-31-30	8,134	8,065	Gowrie
"	7870	3-31-30	8,145	8,096	Sioux City
"	7466	3-31-30	8,082	8,034	Milford
"	7460	3-31-30	8,093	8,045	Rembrandt
"	5919	4- 4-30	8,105	8,047	Sioux City
"	7431	4-11-30	8,088	8,040	Manson
GATX	23119	4-14-30	8,154	8,096	Omaha-Walker Oil Co.
"	27891	4- 8-30	10,084	10,048	Council Bluffs
NATX	5794	3-29-30	8,113	8,027	" "
"	7389	3-31-30	8,086	8,038	" "
"	5211	3-29-30	8,104	8,051	" "
CHIX	1071	4-18-30	8,169	8,023	" "
			139,735	138,870	

In May, 1930

NATX	5823	5-20-30	8,056	8,046	Council Bluffs
"	5731	5- 5-30	8,001	7,991	" "
			16,057	16,037	

In June, 1930

NATX	7392	6-14-30	7,955	7,995	Creston

In July, 1930

NATX	5916	7-15-30	7,907	7,909	Ft. Dodge
"	7373	7-13-30	7,897	8,043	Council Bluffs
"	7365	7-19-30	7,901	8,038	" "
"	5977	7-25-30	7,906	8,053	" "
			31,611	32,043	

[fol. 268] Gallonage Difference on Tank Cars Reported to Iowa in August, 1930

NATX	7383	7-22-30	7,892	8,024	Storm Lake
"	5857	7-23-30	7,921	7,913	Sioux City
"	7486	7-23-30	7,907	8,039	Rodman
"	1714	7-24-30	7,976	8,165	Dunlap
"	5956	7-26-30	7,913	7,921	Sioux City
GATX	14393	8-23-30	7,992	7,916	Shenandoah
BIGX	743	8-19-30	7,914	7,924	
			55,515	55,902	

In September, 1930

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
NATX	9165	9-16-30	8,064	8,069	Creston
"	16827	9-15-30	7,935	7,985	Mallard
BIGX	713	8-27-30	7,947	7,949	Milford
NATX	5793	9-23-30	8,009	7,983	Council Bluffs
"	5228	9-14-30	7,913	7,888	" "
BIGX	723	9- 4-30	7,947	7,984	" "
"	798	9- 8-30	7,960	8,047	" "
"	2632	9-18-30	8,003	8,000	" "
			63,778	63,905	

In October, 1930

BIGX	766	10- 9-30	7,996	8,044	Sioux City
"	739	10-24-30	8,080	8,041	Council Bluffs
			16,076	16,085	

Gallonage Difference on Tank Cars Reported to Iowa in November, 1930

NATX	1938	11-21-30	8,122	8,103	Granville
"	5835	11- 5-30	8,084	8,055	Rembrandt
"	1912	11-13-30	8,135	8,106	Fonda
"	9147	11-13-30	8,040	8,011	Milford
"	5841	11-16-30	8,075	8,046	Shenandoah
GATX	23119	11-10-30	8,106	8,096	Pocohantas
"	14393	11-10-30	8,130	8,120	Gowrie
NATX	1750	11-10-30	8,120	8,110	Rodman
BIGX	755	10-28-30	8,054	8,044	Aspinwall
"	715	10-28-30	8,051	8,041	Fonda
"	710	11- 4-30	8,060	8,041	Shenandoah
"	765	11- 6-30	8,076	8,047	Dunlap
"	747	11- 8-30	8,083	8,044	Carroll
"	787	11-14-30	8,059	8,049	Gowrie
"	721	11-20-30	8,060	8,041	Creston
"	714	11-10-30	8,066	8,047	Milford
BIGX	733	11-12-30	8,051	8,041	Mallard
"	784	11-12-30	8,068	8,049	Sioux City
"	2837	11-22-30	8,090	8,061	Jefferson
"	2824	11-22-30	8,091	8,062	Ft. Dodge
"	760	11-22-30	8,105	8,047	Cumberland
"	2830	11-22-30	8,095	8,066	Creston
"	767	10-28-30	8,057	8,047	Council Bluffs
"	781	11- 3-30	8,061	8,042	" "
"	726	11- 6-30	8,070	8,041	" "
"	795	11- 8-30	8,071	8,042	" "
	635	11-20-30	8,101	8,082	" "
			218,181	217,581	

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Gallonage Difference on Tank Cars Reported to Iowa in December, 1930

GATX	23119	12- 3-30	8,165	8,096	Cumberland
"	6717	12- 6-30	8,011	7,992	Gowrie
NATX	5162	12- 6-30	8,091	8,062	Pocohontas
"	5124	12-11-30	8,111	8,063	Fonda
"	7435	12-15-30	8,055	8,031	Shenandoah
"	1435	12- 2-30	8,079	8,060	Shenandoah

Gallonage Difference on Tank Cars Reported to Iowa in Decemb
1930—Continued

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of tow
BIGX	739	11-26-30	8,099	8,041	Ft. Dodge
"	2826	11-26-30	8,120	8,062	Rembrandt
"	2825	11-26-30	8,118	8,060	Gowrie
"	723	11-29-30	8,112	8,044	Sioux City
"	414	11-29-30	8,088	8,059	Aspinwall
"	750	12- 5-30	8,121	8,044	Pocohontas
"	710	12-10-30	8,109	8,041	Storm Lake
"	707	12-10-30	8,112	8,044	Fonda
"	780	12-18-30	8,153	8,056	Shenandoah
"	762	12-23-30	8,157	8,041	Sioux City
"	738	12-26-30	8,147	8,041	Jefferson
NATX	7446	12-19-30	8,096	8,043	Creston
"	5222	12-20-30	8,112	8,054	Gowrie
"	5110	12-20-30	8,117	8,059	Mallard
BIGX	744	12- 1-30	8,118	8,041	Council Bluffs
"	764	12- 9-30	8,124	8,049	" "
"	769	12-11-30	8,112	8,044	" "
"	729	12-19-30	8,147	8,041	" "
"	787	12-27-30	8,155	8,049	" "
"	715	11-28-30	8,118	8,041	" "
			210,947	209,258	

Gallonage Difference on Tank Cars Reported to Iowa in January, 193

BIGX	2905	12-30-30	8,141	8,064	Rembrandt
NATX	5096	12-24-30	8,138	8,060	Pocahontas
GATX	23119	12-27-30	8,184	8,096	Rembrandt
NATX	5282	12-27-30	8,133	8,045	Peterson
NATX	5124	12-31-30	8,151	8,063	Shenandoah
BIGX	787	12-22-30	8,155	8,049	Ft. Dodge
NATX	5844	1-17-31	8,178	8,052	Shenandoah
GATX	14393	1-12-31	8,178	8,120	Creston
NATX	5210	1-13-31	8,097	8,049	Rodman
"	5135	1-16-31	8,125	8,057	Milford
GATX	13456	1- 1-31	8,160	8,072	Cumberland
"	13293	1-13-31	8,124	8,076	Pocahontas
BIGX	704	12-30-30	8,150	8,078	Council Bluffs
"	759	1- 3-31	8,144	7,940	" "
"	726	1- 6-31	8,157	8,041	" "
BIGX	739	1-17-31	8,147	8,041	Council Bluffs
"	738	1-21-31	8,157	8,041	" "
			138,519	136,944	

In February, 1931

BIGX	714	1-24-31	8,144	8,049	Sioux City
"	738	2- 4-31	8,089	8,041	Storm Lake
"	778	2- 5-31	8,104	8,056	Dunlap
"	798	2- 6-31	8,095	8,047	Gowrie
"	705	2- 9-31	8,099	8,041	Shenandoah
"	769	2- 9-31	8,102	8,044	Aspinwall
"	729	2-18-31	8,109	8,041	Mallard
"	761	2-21-31	8,112	8,044	Sioux City
NATX	5113	1-31-31	8,101	8,062	Rembrandt
"	5211	2- 2-31	8,090	8,051	Pocahontas
GATX	13456	2- 3-31	8,111	8,072	Shenandoah
NATX	5296	2- 3-31	8,079	8,040	Milford
"	5100	2- 6-31	8,085	8,046	Algona
"	5201	2- 6-31	8,100	8,061	Creston

In February, 1931—Continued

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
NATX	1750	2-10-31	8,129	8,100	Aspinwall
"	7420	2-14-31	8,102	8,044	Mallard
"	7833	2-18-31	8,124	8,080	Pocahontas
"	5887	2-20-31	8,085	8,056	Milford
BIGX	721	1-31-31	8,109	8,041	Council Bluffs
"	767	2-10-31	8,124	8,047	" "
"	766	2-12-31	8,112	8,044	" "
"	739	2-16-31	8,128	8,041	" "
"	715	1-28-31	8,118	8,041	" "
			186,451	185,189	

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Gallonage Difference on Tank Cars Reported to Iowa in March, 1931

BIGX	2828	3-18-31	8,090	8,061	Shenandoah
"	2832	3-20-31	8,111	8,063	Aspinwall
"	2889	3-21-31	8,110	8,062	Pocahontas
"	747	3-21-31	8,102	8,044	Milford
"	720	3-23-31	8,089	8,041	Rembrandt
NATX	5231	2-23-31	8,083	8,054	Shenandoah
GATX	6717	2-26-31	8,030	7,992	Creston
NATX	5162	3- 7-31	8,135	8,062	Boxholm
"	1714	3- 7-31	8,183	8,109	Rodman
GATX	14393	3- 7-31	8,194	8,120	Pocahontas
NATX	5210	3-23-31	8,059	8,049	Creston
"	5825	2-28-31	8,078	8,049	Fonda
BIGX	720	2-26-31	8,109	8,041	Council Bluffs
"	714	3- 4-31	8,134	8,047	"
"	765	3-13-31	8,115	8,047	"
"	738	3-18-31	8,089	8,041	"
"	712	3-24-31	8,089	8,041	"
			137,800	136,923	"
					"

In April, 1931

BIGX	798	3-30-31	8,153	8,047	Dunlap
"	765	3-30-31	8,153	8,047	Sioux City
"	766	3-30-31	8,150	8,044	Carroll
"	2447	4- 2-31	8,165	8,097	Creston
"	744	4- 2-31	8,118	8,041	Creston
"	2833	4- 2-31	8,122	8,064	Shenandoah
"	2837	4- 4-31	8,129	8,061	Pocahontas
"	729	4-21-31	8,060	8,041	Shenandoah
"	701	4-22-31	8,063	8,044	"
"	750	4-24-31	8,083	8,044	Storm Lake
"	2843	4-24-31	8,102	8,063	" "
"	2625	4-24-31	8,107	8,078	Creston
GATX	13293	3-29-31	8,120	8,076	Peterson
NATX	5967	4-14-31	8,015	8,040	Shenandoah
BIGX	781	3-30-31	8,148	8,042	Council Bluffs
"	755	4-10-31	8,073	8,044	" "
			129,761	128,873	

Gallonage Differences on Tank Cars Reported to Iowa in May, 1931

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
BIGX	2643	4-27-31	8,115	8,086	Algona
"	726	5- 1-31	8,051	8,041	Ft. Dodge
"	2625	5- 7-31	8,097	8,078	Milford
"	2698	5- 7-31	8,100	8,081	Pocahontas
"	2401	5- 7-31	8,110	8,108	Shenandoah
"	2835	5-11-31	8,073	8,063	Rembrandt
"	2841	5-21-31	7,975	7,995	Creston
"	759	4-29-31	8,057	8,047	Council Bluffs
"	767	5- 8-31	8,047	7,999	" "
"	723	5- 1-31	8,054	8,044	Fonda
			80,679	80,534	

In June, 1931

BIGX	2892	5-26-31	8,072	8,062	Gowrie
"	2722	6-19-31	8,009	8,012	Ft. Dodge
"	729	6- 3-31	7,973	7,993	Council Bluffs
			24,054	24,067	

In August, 1931

BIGX	2865	8- 6-31	7,946	8,062	Soo City
"	2400	8-15-31	8,007	8,095	Ft. Dodge
			15,953	16,157	

In September, 1931

BIGX	707	9- 5-31	7,919	7,916	Council Bluffs
CHIX	8457	9- 9-31	7,964	7,908	" "
BIGX	630	9-19-31	7,907	8,082	" "
"	2878	9-23-31	7,996	7,987	" "
			31,786	31,893	

In October, 1931

BIGX	2484	9-30-31	8,126	8,155	Gowrie
"	2896	10-17-31	8,071	8,061	Soo City
"	2830	10-17-31	8,085	8,066	Council Bluffs
"	2843	10-17-31	8,082	8,063	" "
			32,364	32,345	

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Gallonage Difference on Tank Cars Reported to Iowa In November, 1931

BIGX	2831	10-30-31	8,090	8,061	Whiting
"	2462	10-31-31	8,153	8,095	Soo City
"	2450	11- 2-31	8,136	8,097	Fonda
MMKX	104	11- 4-31	6,055	6,048	Ft. Dodge
"	2748	11- 4-31	8,107	8,059	Milford

Gallonage Difference on Tank Cars Reported to Iowa in November, 1931—Continued

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
BIGX	2840	11- 5-31	8,099	8,062	Shenandoah
"	2834	11- 5-31	8,099	8,060	Granville
"	2407	11- 5-31	8,129	8,095	Soo City
"	2443	11- 5-31	8,146	8,097	Storm Lake
"	2888	11- 7-31	8,092	8,063	Rodman
"	2780	11- 7-31	8,091	8,062	Rembrandt
"	428	11- 7-31	8,073	8,044	Pocahontas
"	494	11- 7-31	8,122	8,074	Milford
"	2817	11- 9-31	8,088	8,069	Soo City
"	2837	11- 9-31	8,090	8,071	Soo City
GATX	13606	11- 9-31	8,015	7,986	Storm Lake
BIGX	2808	11-13-31	8,108	8,060	Creston
"	2443	11-13-31	8,136	8,097	Mason City
"	494	11-14-31	8,113	8,074	Fonda
"	2400	11-14-31	8,134	8,095	Fonda
"	2639	11-14-31	8,131	8,087	Soo City
"	2462	11-14-31	8,134	8,095	Shenandoah
"	2841	11-16-31	8,091	8,062	"
"	2862	11-19-31	8,099	8,060	Milford
"	2791	11-21-31	8,109	8,061	Whiting
"	2780	11-21-31	8,110	8,062	Gowrie
"	2443	11-25-31	8,185	8,097	Storm Lake
"	2791	10-30-31	8,090	8,061	Council Bluffs
"	2898	10-30-31	8,096	8,062	" "
"	2833	10-31-31	8,117	8,064	" "
"	2791	11- 5-31	8,109	8,061	" "
"	2404	11- 5-31	8,129	8,095	" "
"	2724	11- 5-31	8,131	8,097	" "
"	2831	11- 6-31	8,109	8,061	" "
"	413	11- 6-31	8,095	8,042	" "
"	2739	11- 6-31	8,094	8,055	" "
"	2724	11- 9-31	8,116	8,097	" "
"	474	11-18-31	8,081	8,071	" "
"	2734	11-21-31	8,094	8,055	" "
"	2724	11-26-31	8,166	8,097	" "
"	2825	11-26-31	8,129	8,060	" "
"	2748	11-16-31	8,078	8,059	Peterson
			338,569	336,920	

Gallonage Difference on Tank Cars Reported to Iowa in December, 1931

GATX	14611	11-27-31	8,128	8,050	Rembrandt
"	14587	11-27-31	8,218	8,129	Storm Lake
BIGX	2830	11-30-31	8,130	8,066	Soo City
"	2468	12-23-31	8,198	8,100	Whiting
"	2443	12-24-31	8,195	8,097	Mt. Pleasant
GATX	29323	12-18-31	8,175	8,102	Council Bluffs
"	29636	12-18-31	8,170	8,102	" "
BIGX	424	12-22-31	8,135	8,047	" "
CTAX	6922	12-23-31	8,107	8,097	" "
BIGX	413	12- 1-31	8,139	8,042	" "
"	2734	12- 5-31	8,172	8,055	" "
"	2649	12- 8-31	8,173	8,075	" "
"	2739	12-14-31	8,181	8,055	" "
"	2840	12-19-31	8,177	8,064	" "
"	2741	12-21-31	8,172	8,060	" "
BIGX	2400	12- 1-31	8,183	8,095	Pocahontas
"	494	12- 2-31	8,202	8,094	Milford
"	2755	12- 2-31	8,157	8,050	Gowrie
"	2832	12- 2-31	8,170	8,063	Soo City

Gallonage Difference on Tank Cars Reported to Iowa in December, 1931 Continued

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
BIGX	2186	12- 3-31	6,536	6,462	Creston
"	429	12- 3-31	8,189	8,082	Malvern
"	2616	12- 4-31	8,146	8,078	Estherville
"	2443	12- 5-31	8,195	8,097	Carroll
"	2400	12- 5-31	8,193	8,095	Fonda
"	2862	12- 5-31	8,158	8,060	Jefferson
"	2739	12- 8-31	8,152	8,055	Dunlap
"	2828	12- 8-31	8,159	8,061	Shenandoah
"	424	12- 8-31	8,144	8,047	Dunlap
"	2766	12- 9-31	8,109	8,053	Mason City
"	2748	12- 9-31	8,166	8,059	" "
"	2746	12- 9-31	8,176	8,050	Soo City
"	2400	12-12-31	8,193	8,095	Ft. Dodge
"	2876	12-16-31	8,171	8,064	Creston
"	2755	12-15-31	8,157	8,050	Rembrandt
"	494	12-15-31	8,181	8,074	Manson
"	2836	12-21-31	8,151BP	8,063	Shenandoah
"	2832	12-21-31	8,170BP	8,063	Soo City
"	2876	12-21-31	8,162BP	8,064	Milford
"	2831	11-27-31	8,149	8,061	Council Bluffs
"	2468	11-27-31	8,179	8,100	" "
			325,018	321,276	

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Gallonage Difference on Tank Cars Reported to Iowa in January, 1932

BIGX	480	12-29-31	8,176	8,069	Ft. Dodge
"	494	12-29-31	8,172	8,074	Mallard
"	125	12-29-31	7,932	7,917	Mt. Pleasant
"	2876	12-30-31	8,171	8,064	Gowrie
"	2755	12-30-31	8,157	8,050	Storm Lake
"	2473	12-31-31	8,208	8,100	Pocahontas
"	2873	1- 1-32	8,187	8,060	Algona
"	2748	1- 1-32	8,186	8,059	Fonda
"	2836	1- 1-32	8,180	8,063	Granville
"	2862	1- 2-32	8,187	8,060	Milford
"	2861	1- 2-32	8,191	8,064	Jefferson
"	2746	1- 2-32	8,181	8,050	Sioux City
"	2824	1- 2-32	8,198	8,062	Sioux City
"	2808	1- 2-32	8,187	8,060	Carroll
"	715	1- 2-32	8,128	8,041	Estherville
"	2407	1- 6-32	8,232	8,095	Shenandoah
"	2400	1- 7-32	[illegible]	8,095	Malvern
"	480	1- 7-32	[illegible]	8,069	Mason City
"	494	1- 7-32	8,220	8,074	" "
"	2681	1-11-32	8,208	8,072	Rembrandt
"	461	1-11-32	8,178	8,071	Mason City
"	480	1-15-32	8,215	8,069	Creston
"	2861	1-15-32	8,210	8,064	Storm Lake
"	2428	1-15-32	8,224	8,078	Cumberland
"	2862	1-16-32	8,196	8,060	Ft. Dodge
"	2739	1-16-32	8,191	8,055	Whiting
"	2748	1-12-32	8,195	8,059	Mason City
"	2473	1-12-32	8,237	8,100	Milford
"	428	1-19-32	8,175	8,044	Iowa City
"	2473	1-19-32	8,237	8,100	" "
"	2893	1-21-32	8,192	8,061	Shenandoah
"	2873	1-26-32	8,196	8,060	Storm Lake
"	2681	1-26-32	8,208	8,072	Pocahontas
"	2720	1-26-32	8,236	8,099	Shenandgah

Gallonage Difference on Tank Cars Reported to Iowa in January, 1932—Continued

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
"	2853	1-26-32	8,196	8,060	Sioux City
"	2881	1-25-32	8,168	8,062	Estherville
"	2831	1-26-32	8,188	8,061	Dunlap
GATX	29494	12-29-31	8,140	8,106	Council Bluffs
BIGX	2843	12-28-31	8,151	8,063	" "
"	413	1- 2-32	8,149	8,042	" "
"	2828	1- 9-32	8,192	8,061	" "
"	2843	1-15-32	8,190	8,063	" "
"	2828	1-16-32	8,197	8,061	" "
"	413	1-18-32	8,159	8,042	" "
"	2832	1-21-32	8,185	8,063	" "
GATX	29423	1- 1-32	8,117	8,102	" "
"	2791	1-26-32	8,188	8,061	" "
			384,668	379,037	

Gallonage Difference on Tank Cars Reported to Iowa in February, 1932

BIGX	2748	1-27-32	8,486	8,059	Mediapolis
"	416	1-29-32	8,193	8,047	Gowrie
"	2722	1-29-32	8,244	8,097	Carroll
"	2466	1-30-32	8,266	8,100	Milford
"	2681	1-30-32	8,237	8,072	Aspinwall
"	2825	2-5-32	8,187	8,060	Sioux City
PX	78508	2- 5-32	6,583	6,482	Mallard
BIGX	2681	2-11-32	8,199	8,072	Rembrandt
"	2791	2-11-32	8,183	8,061	Shenandoah
"	2466	2-11-32	8,227	8,100	Rembrandt
MMKX	104	2-16-32	6,113	6,048	Mason City
BIGX	2873	2-16-32	8,196	8,060	Fonda
"	2829	2-16-32	8,195	8,064	Sioux City
"	2838	2-16-32	8,184	8,062	Whiting
"	2808	2-17-32	8,201	8,060	Mason City
"	416	2-18-32	8,183	8,047	Milford
"	2634	2-22-32	8,202	8,075	Ft. Dodge
"	2681	2-24-32	8,204	8,072	Cumberland
"	2466	2-24-32	8,232	8,100	Jefferson
"	2838	1-29-32	8,174	8,062	Council Bluffs
"	2746	2- 2-32	8,191	8,050	" "
"	2838	2- 2-32	8,203	8,062	" "
"	2852	2- 8-32	8,191	8,060	" "
"	2839	2-16-32	8,196	8,065	" "
"	2404	2-18-32	8,217	8,095	" "
PX	76415	2-24-32	8,177	8,065	" "
"	76367	2-24-32	8,173	8,061	" "
GATX	11828	1-27-32	8,154	8,067	" "
			225,891	222,325	

[fol. 273] Gallonage Difference on Tank Cars Reported to Iowa in March, 1932

BIGX	2416	2-26-32	8,217	8,095	Gowrie
PX	75947	2-27-32	8,149	8,047	Storm Lake
"	76438	3- 1-32	8,177	8,060	Rembrandt
"	76443	3- 1-32	8,154	8,061	Sioux City
"	76382	3- 2-32	8,182	8,065	Pocahontas
"	76108	3- 2-32	8,219	8,097	Creston
"	76299	3- 5-32	8,234	8,097	Pocahontas
"	75991	3- 5-32	8,205	8,069	Rodman
"	76382	3- 8-32	8,230	8,065	Milford
"	76438	3- 8-32	8,225	8,060	Jefferson
"	76403	3- 8-32	8,198	8,062	Shenandoah

Gallonage Difference on Tank Cars Reported to Iowa in March, 1932—Continued

Car number		Date of invoice	Invoiced gallonage	Reported gallonage	Name of town
"	76060	3- 9-32	8,251	8,095	Fonda
"	76087	3- 9-32	8,234	8,078	Mt. Pleasant
"	76150	3-10-32	8,302	8,146	Estherville
"	76322	3-12-32	8,201	8,050	Granville
BIGX	2825	3-12-32	8,206	8,065	Dunlap
PX	76388	3-12-32	8,222	8,066	Sioux City
PX	76299	3-12-32	8,253	8,097	Milford
"	76315	3-12-32	8,191	8,055	Dunlap
"	75991	3-12-32	8,215	8,069	Manson
"	76004	3-12-32	8,220	8,074	Mallard
"	76448	3-14-32	8,206	8,060	Storm Lake
"	76425	3-14-32	8,205	8,064	Whiting
MMKX	103	3-14-32	6,159	6,050	Mt. Pleasant
PX	76299	3-22-32	8,224	8,097	Gowrie
"	76382	3-22-32	8,192	8,065	Ft. Dodge
"	76309	3-25-32	8,126	8,058	Pocahontas
"	76009	3-26-32	8,139	8,071	Shenandoah
"	76004	3-26-32	8,191	8,074	Rembrandt
"	75944	3-26-32	8,163	8,042	Shenandoah
"	76096	3-28-32	8,198	8,100	Milford
"	76299	3-28-32	8,195	8,097	Fonda
"	76289	3-28-32	8,170	8,072	"
"	76322	2-27-32	8,157	8,050	Council Bluffs
"	76367	3- 2-32	8,159	8,061	" "
BIGX	2855	3- 5-32	8,177	8,060	" "
PX	76388	3- 5-32	8,188	8,066	" "
"	76068	3-12-32	8,266	8,100	" "
BIGX	2855	3-12-32	8,216	8,060	" "
PX	76425	3-17-32	8,186	8,064	" "
"	75966	3-18-32	8,139	8,071	" "
"	76064	3-25-32	8,203	8,095	" "
"	76392	3-28-32	8,158	8,065	" "
			350,502	345,115	

Summary

Gallonage Difference on Tank Cars Reported to Iowa

Direct Shipments

Month and year		Invoiced gallonage	Reported gallonage	Gallonage reported over or under
January	1929	40,729	40,564	165
February	1929	177,732	176,215	1,517
March	1929	208,811	207,712	1,099
April	1929	141,573	141,602	29
May	1929	8,080	8,129	49
June	1929	118,348	118,433	85
July	1929	167,859	168,249	390
August	1929	119,693	119,741	48
September	1929	23,895	23,909	14
October	1929	7,962	8,024	62
November	1929	192,549	191,998	551
December	1929	232,200	230,101	2,099
January	1930	277,410	274,211	3,199
February	1930	154,967	153,479	1,488
March	1930	315,775	314,519	1,256
April	1930	139,735	138,870	865
May	1930	16,057	16,037	20
June	1930	7,955	7,995	40

Summary—Continued

Month and year	Invoiced gallonage	Reported gallonage	Gallonage reported over or under
July 1930	31,611	32,043	432
August 1930	55,515	55,902	387
September 1930	63,778	63,905	127
October 1930	16,076	16,085	9
November 1930	218,181	217,581	600
December 1930	210,947	209,258	1,689
January 1931	138,519	136,944	1,575
February 1931	186,451	185,189	1,262
March 1931	137,800	136,923	877
April 1931	129,761	128,873	888
May 1931	80,679	80,534	145
June 1931	24,054	24,067	13
August 1931	15,953	16,157	204
September 1931	31,786	31,893	107
October 1931	32,364	32,345	19
November 1931	338,569	336,920	1,649
December 1931	325,018	321,276	3,742
January 1932	384,668	379,037	5,631
February 1932	225,891	222,325	3,566
March 1932	350,502	345,115	5,387
	5,349,453	5,312,160	37,293

Tax Computation

Unreported gallonage	37,293
Evaporation and Loss (3%)	1,119
Net gallonage on which tax is due	36,174
Amount of Tax, 3c per gallon on Net Gallonage	1,085.22

[fol. 274]

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co.

Council Bluffs, Iowa

Schedule No. 6

Miscellaneous Gasoline Receipts in Council Bluffs, Bulk, That Could Not Be Traced Back to Shipping Point

Date	Car number	Gallons
Aug. 9, 1930		1,923
Sept. 24, 1930		90
Sept. 27, 1930		120
Oct. 2, 1930		190
Oct. 16, 1930		5
Oct. 17, 1930		60
Dec. 9, 1930		207
Dec. 17, 1930		10
Dec. 18, 1930		9
Dec. 19, 1930		10
Dec. 20, 1930		10
Jan. 2, 1931		20
Mar. 4, 1931	MMKX 106 Lub. Oil	6,033
Mar. 22, 1931		1,630
Mar. 28, 1931		75
Apr. 7, 1931		10

Date	Car number	Gallons
Apr. 11, 1931		565
June 24, 1931		800
July 9, 1931		821
July 17, 1931		205
July 26, 1931	BIGX 2796 Kerosene	8,085
Aug. 10, 1931		1,330
Aug. 29, 1931		108
Aug. 31, 1931		150
Sept. 8, 1931		245
Sept. 9, 1931		190
Sept. 10, 1931		1,072
Oct. 19, 1931		240
Dec. 3, 1931		33
Dec. 11, 1931		180
Dec. 31, 1931		20
Jan. 13, 1932		309
Feb. 27, 1932		60
Mar. 18, 1932		210
Mar. 18, 1932		1,990
		27,015

Tax Computation

Unreported Gallonage	27,015	
Evaporation and Loss (3%)	810	
Net Gallonage on which Tax is Due	26,205	
Amount of Tax, 3c per Gallon on Net Gallonage		786.15

Schedule No. 12

Tank Cars of Gasoline, Unloaded at Refinery, on Which Tax was Paid to the State of Iowa

Date received at Omaha	Car number	Commodity	Invoiced gallonage	Reported gallonage
Nov. 6, 1931	ASIX 1562	Aviation Gasoline	8,169	8,169
Feb. 8, 1932	REPX	Casinghead Gasoline	8,169	8,085
				16,254

Tax Computation

Reported Gallonage	16,254	
Evaporation and Loss (3%)	488	
Net Gallonage	15,766	
Amount of Tax, 3c per Gallon on Net Gallonage. To be deducted from total Iowa Tax, as same is taxed thru other methods		472.98

Accompanying and forming part of our Report of August 9, 1932 and subject to the Comments contained therein.

(Here follows Schedule 7, side folios 275-278)

[fol. 275]

Gasoline T

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Analysis of Omaha Bulk for

Year	Month	Omaha bulk receipts Source	Gallonage	Total	Gallonage transferred to Iowa	lo r
1929	January	9 Tanks Cars	72,856	72,856	.....	
	February	6 Tank Cars	48,394		.....	
		From C. B. Bulk	3,600	51,994	.....	
	March	16 Tank Cars	129,155	129,155	.....	
	April	8 Tank Cars	48,643	48,643	.....	
	May	14 Tank Cars	113,550	113,550	.....	
	June	14 Tank Cars	111,273	111,273	.....	
	July	11 Tank Cars	86,580			
		From C. B. Bulk	2,118	88,698	4,272	
	August	13 Tank Cars	103,044	103,044	4,354	
	September	9 Tank Cars	70,740			
		From Refinery	17,697	88,437	10,246	
	October	8 Tank Cars	62,893			
		From C. B. Bulk	20,872			
		From Refinery	42,594	126,356	7,383	
	November	5 Tank Cars	40,590			
		From C. B. Bulk	3,200			
		From Refinery	59,554	103,344	2,916	
	December	5 Tank Cars	40,489			
		From Refinery	40,799	81,288	8,423	
	Total			1,118,638	37,594	1

[fol. 276]

1930	January	5 Tank Cars	40,369			
		From Refinery	67,919	108,288	12,143	
	February	3 Tank Cars	24,159			
		From Refinery	72,302	96,461	8,333	
	March	4 Tank Cars	32,363			
		From Refinery	87,567	119,930	10,962	
	April	6 Tank Cars	48,140			
		From Refinery	93,256	141,396	14,933	
	May	5 Tank Cars	40,198			
		From Refinery	102,204	142,402	32,682	
	June	6 Tank Cars	48,137			
		From Refinery	96,878	145,015	34,300	
	July	5 Tank Cars	40,213			

State of Iowa

e Tax Department—State Treasurer

Audit of MonaMotor Oil Co

Council Bluffs, Iowa

Schedule No. 7

x for Period from January 1, 1929, to March 31, 1932

Net gallonage to be reported to Nebraska	Reported to Nebraska: Cars unloaded at Omaha, bulk	Pumpings from refinery	Other gallonage	Cars unloaded at refinery	Cars were empty or were not gasoline	Total	Gallonage unreported to Nebraska
72,856	72,856	.....	.....	.....	.....	72,856	.....
51,994	48,394	.....	3,600	.....	.....	51,994	.....
129,155	129,155	.....	.....	.....	.....	129,155	.....
48,643	48,643	.....	.....	.....	.....	48,643	.....
113,550	113,550	.....	.....	.....	.....	113,550	.....
111,273	111,273	.....	.....	.....	.....	111,273	.....
			Refund 4,272				
84,426	86,580	.....	2,118	.....	.....	84,426	.....
			Refund 4,054				
98,690	94,961	.....		.....	.....	90,907	7,783
78,191	70,740	.....	Refund 3,590	.....	.....	67,150	11,041
			Refund 3,346				
118,973	62,893	.....	29,789	.....	.....	89,336	29,637
100,428	32,353	.....	3,200	8,101	32,491	76,145	24,283
72,865	40,489	.....	.....	8,072	50,648	99,209	26,344
1,087,044	911,887	.....	23,445	16,173	83,139	1,034,644	46,400
96,145	40,369	.....	.....	16,179	32,431	88,979	7,166
88,128	24,159	.....	.....	36,980	16,211	77,350	10,778
108,968	32,363	.....	.....	8,077	40,660	81,100	27,868
126,463	48,140	51,420	.....	8,080	.....	107,640	18,823
109,720	32,172	48,016	.....	.....	.....	80,188	29,532
110,715	48,137	39,631	.....	.....	.....	87,768	22,947

	June	6 Tank Cars	48,436									
		From Refinery	96,878									
			145,314	145,015	34,300	110,715	48,137	39,631	.....	.....	.....	87,768	22,947
	July	5 Tank Cars	40,213									
		From Refinery	114,290									
			154,503	154,503	36,790	117,713	40,213	46,871	.....	.....	.....	87,084	30,629
	August	5 Tank Cars	40,247									
		From Refinery	93,316									
		From C. B. Bulk	1,000									
			134,563	134,563	23,234	111,329	40,247	49,327	.....	.....	.....	89,574	21,755
	September	6 Tank Cars	48,334									
		From Refinery	107,915									
		From C. B. Bulk	600									
			156,849	156,849	24,149	132,700	48,334	51,309	.....	.....	.....	99,643	33,057
	October	5 Tank Cars	40,211									
		From Refinery	96,086									
		From C. B. Bulk	130									
			136,427	136,427	25,698	110,729	40,211	46,718	.....	16,190	.....	103,119	7,610
	November	7 Tank Cars	56,309									
		From C. B. Bulk	285									
		From Refinery	91,683									
			148,277	148,277	26,151	122,126	56,309	39,648	.....	8,159	.....	104,116	18,010
	December	6 Tank Cars	48,259									
		From Refinery	88,178									
		From C. B. Bulk	685									
			137,122	137,122	25,120	112,002	48,259	41,127	.....	8,097	.....	97,483	14,519
	Total			1,621,233	274,495	1,346,738	498,913	414,067	.....	101,762	89,302	1,104,044	242,694
[fol. 277]													
1931	January	6 Tank Cars	48,373									
		From Refinery	84,116									
		From C. B. Bulk	890									
			133,379	133,379	22,644	110,735	48,373	41,326	.....	.....	.....	89,699	21,036
	February	6 Tank Cars	48,254									
		From Refinery	78,653									
		From C. B. Bulk	1,937									
			128,844	128,844	20,158	108,686	48,254	38,471	.....	16,244	.....	102,969	5,717
	March	6 Tank Cars	48,274									
		From Refinery	90,751									
		From C. B. Bulk	510									
			139,535	139,535	20,654	118,881	48,274	41,682	.....	.....	.....	89,956	28,925
	April	5 Tank Cars	40,220									
		From Refinery	104,133									
			144,353	144,353	28,072	116,281	40,220	51,418	6,312	.....	.....	97,950	18,331
	May	4 Tank Cars	32,184									
		From Refinery	152,815									
		From C. B. Bulk	3,000									
			187,999	187,999	25,267	162,732	32,184	74,182	.....	.....	8,000	114,366	48,366
	June	8 Tank Cars	64,340									
		From Refinery	179,358									
		From C. B. Bulk	600									
			244,298	244,298	25,668	218,630	64,340	45,153	3,823	56,490	.....	169,806	48,824
	July	6 Tank Cars	48,259									
		From Refinery	175,912									
			224,171	224,171	23,321	200,850	48,259	27,246	6,225	183,597	.....	265,327	64,477
	August	5 Tank Cars	40,220									
		From Refinery	143,465									
		From C. B. Bulk	3,400									
			187,085	187,085	23,390	163,695	40,220	68,192	.....	24,371	.....	132,783	30,912
	September	8 Tank Cars	64,477									
		From Refinery	174,902									
			239,379	239,379	21,827	217,552	64,477	77,956	5,663	.....	.....	148,096	69,456
	October	7 Tank Cars	56,336									
		From Refinery	151,960									
		From C. B. Bulk	600									
			208,896	208,896	16,416	192,480	56,336	.....	5,480	121,178	.....	182,994	9,486
	November	6 Tank Cars	48,482									
		From Refinery	124,921									
		From C. B. Bulk	1,200									
			174,603	174,603	9,429	165,174	48,482	.....	2,005	153,262	.....	203,749	38,575
	December	6 Tank Cars	48,464									
		From Refinery	121,486									
			169,950	169,950	9,664	160,286	48,464	.....	.....	64,906	.....	113,370	46,916

			187,085	23,338	163,095	40,220	68,492	.....	24,371	.....	132,788	30,312
September	8 Tank Cars	64,477										
	From Refinery	174,902										
			239,379	21,827	217,552	64,477	77,956	5,663	.....	.....	148,096	69,456
October	7 Tank Cars	56,336										
	From Refinery	151,960										
	From C. B. Bulk	600										
			208,896	16,416	192,480	56,336	.....	5,480	121,178	.....	182,994	9,486
November	6 Tank Cars	48,482										
	From Refinery	124,921										
	From C. B. Bulk	1,200										
			174,603	9,429	165,174	48,482	.....	2,005	153,262	.....	203,749	38,575
December	6 Tank Cars	48,464										
	From Refinery	121,486										
			169,950	9,664	160,286	48,464	.....	.....	64,906	.....	113,370	46,916
Total			2,182,492	246,510	1,935,982	587,883	465,626	29,508	620,048	8,000	1,711,065	224,917

[fol. 278]

1932 January	6 Tank Cars	48,405										
	From Refinery	93,359										
			141,764	7,640	134,124	48,405	.....	.....	121,460	.....	169,865	35,741
February	5 Tank Cars	40,319										
	From Refinery	94,830										
			135,149	8,405	126,744	40,319	.....	.....	16,237	.....	56,556	70,188
March	5 Tank Cars	40,300										
	From Refinery	110,388										
			150,688	11,459	139,229	40,300	87,810	7,638	16,154	.....	151,902	12,673
Total			427,601	27,504	400,097	129,024	87,810	7,638	153,851	.....	378,323	21,774

Summary

Year										
1929	1,118,638	37,594	1,081,044	911,887	.....	23,445	16,173	83,139	1,034,644	46,400
1930	1,621,233	274,495	1,346,738	498,913	414,067	.....	101,762	89,302	1,104,044	242,694
1931	2,182,492	246,510	1,935,982	587,883	465,626	29,508	620,048	8,000	1,711,065	224,917
Three Months Ended March 31, 1932	427,601	27,504	400,097	129,024	87,810	7,638	153,851	.....	378,323	21,774
	5,349,964	586,103	4,763,861	2,127,707	967,503	69,591	891,834	180,441	4,228,076	535,785

Tax Computation

Unreported Gallonage	535,785
Evaporation and Loss (3%)	16,073
Net Gallonage on which tax is due	519,712
Amount of tax, 4¢ per gallon on Net Gallonage	20,788.48

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co. Council Bluffs, Iowa

Schedule No. 8

Consolidated Statement of Interstate Gasoline Shipments by Trucks into Nebraska, Exclusive of Omaha Bulk, for Period from January 1, 1929, to March 31, 1932

Year	Month	From	Nickerson bulk	Bennington bulk	Nebraska at large	Total	Reported to Nebraska: Detail	Reported to Nebraska: Total	Gallonage unreported to Nebraska
1929	January	Council Bluffs Bulk	.....	.....	3,800	3,800	3,800	3,800	.....
	February	Council Bluffs Bulk	.....	.....	4,845	4,845	4,845	4,845	.....
	March	Council Bluffs Bulk	.....	.....	5,275	5,275	6,066	6,066	* 791
	April	Council Bluffs Bulk	.....	.....	3,866	3,866	2,925	2,925	941
	May	Council Bluffs Bulk	.....	.....	5,695	.....	5,695		
		Sioux City Bulk	.....	.....	* 4,135	9,830	4,135	9,830	.....
	June	Council Bluffs Bulk	.....	.....	7,835		7,835		
		Sioux City Bulk	.....	.....	* 3,508	11,343	3,508	11,343	.....
	July	Council Bluffs Bulk	520	.....	9,362		9,881		
		Sioux City Bulk	.....	.....	* 4,860	14,742	4,860	14,741	1
	August	Council Bluffs Bulk	.....	.....	9,738		8,286		
		Sioux City Bulk	.....	.....	* 6,157	15,895	6,157	14,443	1,452

* Gallonage taken from Nebraska Reports, as Records are not available, included for Comparative Purposes Only.

Subject to 2c tax per gallon and evaporation and loss of 2%.

Schedule 8—Continued

Year	Month	From	Nickerson bulk	Bennington bulk	Nebraska at large	Total	Reported to Nebraska: Detail	Reported to Nebraska: Total	Gallonage unreported to Nebraska
	September	Council Bluffs Bulk	315	.....	4,346		3,800		
		Sioux City Bulk	.....	.....	4,427	9,088	4,124	7,924	1,164
	October	Council Bluffs Bulk	.....	.....	5,440		4,460		
		Sioux City Bulk	.....	.....	4,401	9,841	4,765	9,225	616
	November	Council Bluffs Bulk	315	.....	5,118		4,300		
		Sioux City Bulk	.....	.....	2,382	7,815	1,879	6,179	1,636
	December	Council Bluffs Bulk	.....	.....	4,610		4,615		
		Sioux City Bulk	.....	.....	2,745	7,355	2,681	7,296	59
			1,150	.....	102,545	103,695	.....	98,617	5,078
[fol. 280]									
1930	January	Council Bluffs Bulk	.....	.....	1,018				
		Sioux City Bulk	.....	.....	2,534		1,488		
		Refinery	.....	.....	54				
	February	Council Bluffs Bulk	.....	.....	728	3,606	———	1,488	2,118
		Sioux City Bulk	.....	.....	3,260		1,070		
	March	Council Bluffs Bulk	.....	.....	890	3,988	———	1,070	2,918
		Sioux City Bulk	.....	.....	3,393		2,750		
	April	Council Bluffs Bulk	.....	.....	670	4,283	———	2,750	1,533
		Sioux City Bulk	.....	.....	4,673		2,515		
	May	Council Bluffs Bulk	.....	.....	675	5,343	———	2,515	2,828
		Sioux City Bulk	.....	.....	5,221		2,753		

		Yankton Bulk	.....	.....	240				
						6,136	——	2,753	3,383
	June	Council Bluffs Bulk	.....	.....	1,075				
		Sioux City Bulk	.....	.....	5,635		3,152		
		Yankton Bulk	.....	.....	135				
						6,845	——	3,152	3,693
	July	Council Bluffs Bulk	.....	.....	7,398				
		Sioux City Bulk	.....	.....	6,383		1,320		
		Yankton Bulk	.....	.....	15				
						13,796	——	1,320	12,476
	August	Council Bluffs Bulk	315	.....	11,675				
		Sioux City Bulk	.....	.....	5,995		1,007		
						17,985	——	1,007	16,978
	September	Council Bluffs Bulk	.....	.....	17,271				
		Sioux City Bulk	.....	.....	5,540		792		
						22,811	——	792	22,019
	October	Council Bluffs Bulk	.....	.....	17,026				
		Sioux City Bulk	.....	.....	5,388		4,288		
						22,414	——	4,288	18,126
	November	Council Bluffs Bulk	465	.....	9,077				
		Sioux City Bulk	.....	.....	3,557		2,425		
						13,099	——	2,425	10,674
	December	Council Bluffs Bulk	1,265	.....	13,208				
		Sioux City Bulk	.....	.....	3,787		3,874		
		Yankton Bulk	.....	.....	150				
						18,410	——	3,874	14,536
[fol. 281]			2,045	.....	136,671	138,716	.....	27,434	111,282
1931	January	Council Bluffs Bulk	.....	.....	13,120				
		Sioux City Bulk	.....	.....	3,908		7,182		
		Yankton Bulk	.....	.....	152				
						17,180	——	7,182	9,998
	February	Council Bluffs Bulk	.....	.....	15,773				
		Sioux City Bulk	.....	.....	3,713		3,843		

Year	Month	From	Nickerson bulk	Bennington bulk	Nebraska at large	Total	Reported to Nebraska		Gallonage unreported to Nebraska
							Detail	Total	
		Yankton Bulk	.....	.....	165				
	March	Council Bluffs Bulk	.....	.....	14,400	19,651	——	3,843	15,808
		Sioux City Bulk	.....	.....	4,488		4,147		
		Yankton Bulk	.....	.....	130				
	April	Council Bluffs Bulk	1,680	.....	16,560	19,018	——	4,147	14,871
		Sioux City Bulk	.....	.....	4,402		4,378		
		Yankton Bulk	.....	.....	137		549		
		Shenandoah Bulk	.....	.....	1,107				
	May	Council Bluffs Bulk	1,630	.....	13,143	23,886	——	4,927	18,959
		Sioux City Bulk	.....	.....	4,169		3,489		
		Yankton Bulk	.....	.....	279				
		Shenandoah Bulk	.....	.....	369				
	June	Council Bluffs Bulk	2,500	.....	9,630	19,590	——	3,489	16,101
		Sioux City Bulk	.....	.....	4,209		4,509		
		Yankton Bulk	.....	.....	274				
		Shenandoah Bulk	.....	.....	2,634		2,214		
	July	Council Bluffs Bulk	2,800	.....	10,365	19,247	——	6,723	12,524
		Sioux City Bulk	.....	.....	5,317		5,612		
		Yankton Bulk	.....	.....	172				
		Shenandoah Bulk	.....	.....	4,585		5,425		
	August	Council Bluffs Bulk	4,965	.....	7,780	23,239	——	11,037	12,202
		Sioux City Bulk	.....	.....	5,797		4,691		
		Yankton Bulk	.....	.....	132				
		Shenandoah Bulk	.....	.....	3,765		6,420		
		Refinery	810	360	2,560				
						26,169	——	11,111	15,058

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September	Council Bluffs Bulk	4,390	.....	3,982				
	Sioux City Bulk	.....	.....	8,017		4,081		
	Shenandoah Bulk	.....	.....	315				
	Refinery	1,420	1,465	1,990		3,900		
					21,579		7,981	13,598
October	Council Bluffs Bulk	5,730	.....	4,205				
	Sioux City Bulk	.....	.....	13,472		2,707		
	Refinery	2,050	.....	1,480		1,840		
					26,937		4,547	22,390
November	Council Bluffs Bulk	3,060	.....	4,805		9,440		
	Sioux City Bulk	.....	.....	5,420		2,947		
	Shenandoah Bulk	.....	.....	2,090		2,090		
					15,375		14,477	898
December	Council Bluffs Bulk	2,760	.....	4,070				
	Sioux City Bulk	.....	.....	1,573		1,171		
	Shenandoah Bulk	.....	.....	2,505		2,090		
					10,908		3,261	7,647
[fol. 283]		33,795	1,825	207,159	242,779	—	82,725	160,054
1932 January	Council Bluffs Bulk	2,250	.....	1,980				
	Sioux City Bulk	.....	.....	514		916		
	Shenandoah Bulk	.....	.....	1,245		1,666		
					5,989		2,576	3,413
February	Council Bluffs Bulk	2,040	.....	765				
	Sioux City Bulk	.....	.....	420		420		
	Shenandoah Bulk	.....	.....	2,070		2,070		
					5,295		2,490	2,805
March	Council Bluffs Bulk	2,050	205	2,987		2,932		
	Sioux City Bulk	.....	.....	1,550		790		
	Shenandoah Bulk	.....	.....	1,254		1,254		
					8,046		4,976	3,070
		6,340	205	12,785	19,330	—	10,042	9,288

Schedule 8—Continued

Summary

Year							
1929	1,150	.....	102,545	103,695	.....	98,617	5,078
1930	2,045	.....	136,671	138,716	.....	27,434	111,282
1931	33,795	1,825	207,159	242,779	.....	82,725	160,054
Three Months Ended March 31, 1932	6,340	205	12,785	19,330	.....	10,042	9,288
	43,330	2,030	459,160	504,520	.....	218,818	285,702

Tax Computation

	Rate	4c Tax	Rate	2c Tax	Total
Unreported Gallonage	.....	286,493	.....	791	.....
Evaporation and Loss (3%)	(3%)	8,595	(2%)	16	.....
Net Gallonage on which tax is due	.....	277,898	.....	775	277,123
Amount of Tax, on Net Gallonage at rate per gallon in force	(4c)	11,115.92	(2c)	15.50	11,100.42

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State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co., Council Bluffs, Iowa

Schedule No. 9

Gasoline Shipments on Which State Tax Was Billed on Invoices, on Which No Record of Tax Payment Being Made to State of Nebraska Can Be Found

Date of invoice	Company invoiced	Unloading point	How shipped	Invoiced gallonage	Tax charged
6-28-29	Thayer County Highway Comm.	Hebron, Nebr.	PARX 1188	8,120	321.44
6- 4-30	Inter-State Transit Lines	Omaha, Nebr.	Trucked	2,000	80.00
6- 4-30	Yellow Cab & Baggage Co.	" "	"	1,800	72.00
6-14-30	Inter-State Transit Lines	" "	"	8,000	320.00
6-18-30	" " "	" "	"	2,000	80.00
10-21-31	Sherman County	Loup City, Nebr.	GATX 15383 (Brokersol)*	8,105	322.24
7-12-30	On Time Transfer Co.	Omaha, Nebr.	Pumped to their Tank	4,810	192.40
8-19-30	" " " "	" "	" " " "	6,128	245.12
10- 2-30	" " " "	" "	" " " "	6,944	277.76
11-26-30	" " " "	" "	" " " "	6,224	248.96
2-12-31	" " " "	" "	" " " "	6,536	261.44
4-16-31	" " " "	" "	" " " "	6,303	252.12
6-12-31	" " " "	" "	" " " "	6,524	260.96
8- 3-31	" " " "	" "	" " " "	6,548	261.92
9- 5-31	" " " "	" "	" " " "	5,532	221.28
10-24-31	" " " "	" "	" " " "	7,999	319.96
11- 4-31	" " " "	" "	" " " "	845	Not billed
12- 7-31	" " " "	" "	" " " "	6,340	253.60
1-12-32	" " " "	" "	" " " "	6,805	272.20
2- 5-32	" " " "	" "	" " " "	7,228	289.12
3- 3-32	" " " "	" "	" " " "	6,267	250.68
3-29-32	" " " "	" "	" " " "	6,144	245.76
				127,202	5,048.96

Schedule 9—Continued

Tax Computation

Unreported Gallonage	127,202
Evaporation and Loss (3%)	3,816
Net Gallonage on which Tax is Due	123,386
Amount of Tax, 4c per Gallon on Net Gallonage	4,935.44
Tax Actually Charged to Customers	5,048.96

* Shell Capacity of Tank Cars Given to Conform with Nebraska Law.

Accompanying and forming part of our Report of August 9, 1932 and subject to the Comments contained therein.

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State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co.

Council Bluffs, Iowa

Schedule No. 10

Gasoline Shipments to Authorized Dealers in Nebraska on Which No Record of Tax Payment Can Be Found

Date	Name of Company	Unloading point	Car number	Shell capacity	Invoiced gallonage
Dec. 5, 1928	Trim Oil Station	Mason City, Nebr	NATX 5282	8,045	8,084
Dec. 12, 1928	Western Service Company	Omaha, "	MMKX 103	6,050	6,079
Dec. 21, 1928	" " "	" "	NTCX 2213	8,131	8,195
Feb. 7, 1929	Koyen Nash Sales Co	Norfolk, "	NATX 1223	*8,000	8,229
Feb. 20, 1929	Sherman County	Loup City, "	" 5026	8,057	8,125
June 17, 1929	Simpkins Oil Co.	Lodge Pole, "	" 5008	8,054	7,947
June 18, 1929	Ray Pawley	Freemount, "	" 617	*8,000	8,037
Aug. 12, 1929	" "	" "	ALTX 111	*8,000	7,995

Jan. 4, 1930	Community Lumber & Supply Co	Lincoln,	"	NATX	5940	8,044	8,141
July 3, 1930	Walla Oil Co.	Omaha,	"	GATX	13293	*8,132	8,100
July 24, 1930	Nickelson Oil Co	Grand Island,	"	NATX	5931	8,051	7,919
Feb. 27, 1931	O. C. Wells	Stapleton,	"	GATX	13606	*8,143	8,197
Sept. 15, 1931	"	"	"	BIGX	2826	8,062	7,965
Dec. 22, 1931	"	"	"	"	420	8,039	8,087
Mar. 4, 1932	"	"	"	PX	76072	8,100	8,168
						118,908	119,268

Tax Computation

	Rate	2¢ tax	Rate	4¢ tax	Total
Unreported Gallonage		38,283		80,625	118,908
Evaporation and Loss	2%	766	3%	2,419	3,185
Net Gallonage on which Tax is Due		37,517		78,206	115,723
Amount of Tax; Rate per Gallon on Net Gallonage	2¢	750.34	4¢	3,128.24	3,878.58

* Includes Gallonage in the Dome.
# No Record of Car Capacity, Estimated.
Accompanying and forming part of our Report of August 9, 1932 and subject to the Comments contained therein.

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of Mona Motor Oil Co., Council Bluffs, Iowa

Schedule No. 11

Consolidated Statement of Deductions for Gasoline Shipments out of Iowa for period from January 1, 1929, to March 31, 1932

Year	Month	To	From: Council Bluffs bulk	From: Sioux City bulk	From: Shenandoah bulk	From: Esterville bulk	From: Milford bulk	Total Allowable deduction	Deduction reported	Over or under deducted
1929	January	Nebraska	3,800	Records not available	.....	.....	.....	3,800	3,800	.....
	February	Nebraska	8,445	"	.....	.....	Records not available	8,445	8,445	.....
	March	Nebraska	5,275	"	.....	.....	"	5,425	6,066	,641
		South Dakota	100							
		Minnesota	50							
	April	Nebraska	3,866	"	.....	.....	"	3,866	2,925	941
	May	Nebraska	5,695	*4,135	.....	.....	"	9,830	9,830	.....
	June	Nebraska	7,835	*3,508	.....	.....	"	.....	.....	.....
		South Dakota	150	.....	.....	.....		11,493	11,343	150
	July	Nebraska	12,000	*4,860	.....	.....	"	16,860	16,859	1
	August	Nebraska	9,738	*6,157	.....	.....	"	.....	.....	.....
		South Dakota	150	.....	.....	.....	"	16,045	14,443	1,602
	September	Nebraska	4,661	4,427	.....	.....	"	.....	.....	.....
		South Dakota	.....	1,224	.....	.....	"	10,312	7,924	2,388
	October	Nebraska	26,312	4,401	.....	.....	"	.....	.....	.....
		South Dakota	150	714	.....	.....	"	31,577	39,014	7,437
	November	Nebraska	8,633	2,382	.....	.....	"	.....	.....	.....
		South Dakota	150	1,220	.....	.....	"	12,385	9,379	3,006
	December	Nebraska	4,610	2,745	.....	.....	"	.....	.....	.....
		South Dakota	.....	1,945	.....	.....	"	9,300	7,296	2,004
			101,620	37,718	.....	.....	"	139,338	137,324	2,014

* Gallonage taken from Nebraska Reports, as Records are not Available, Included for Comparative Purposes Only.

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Year	Month	To	From: Council Bluffs bulk	From: Sioux City bulk	From: Shenandoah bulk	From: Esterville bulk	From: Milford bulk	Total Allowable deduction	Deduction reported	Over or under deducted
1930	January	Nebraska	1,018	2,534	.....	.....	.....	.....	.....	.....
		South Dakota	.....	3,180	.....	.....	.....	6,732	1,488	5,244
	February	Nebraska	728	3,260	.....	.....	.....	3,988	1,070	2,918
	March	Nebraska	890	3,393	.....	.....	.....	.....	.....	.....
		Minnesota	150	.....	.....	.....	.....	4,433	2,750	1,683
	April	Nebraska	670	4,673	.....	.....	.....	.....	.....	.....
		South Dakota	.....	673	.....	.....	.....	6,016	2,515	3,501
	May	Nebraska	675	5,221	.....	.....	.....	.....	.....	.....
		Minnesota	50	.....	.....	.....	.....	.....	.....	.....
		Colorado	50	.....	.....	.....	.....	5,996	2,753	3,243
	June	Nebraska	1,075	5,635	.....	.....	.....	6,710	3,152	3,558
	July	Nebraska	7,398	6,383	.....	.....	.....	13,781	1,320	12,461
	August	Nebraska	12,990	5,995	.....	.....	.....	.....	.....	.....
		Missouri	50	.....	.....	.....	.....	19,035	1,007	18,028
	September	Nebraska	17,871	5,540	.....	.....	.....	.....	.....	.....
		Minnesota	200	.....	.....	.....	.....	.....	.....	.....
		South Dakota	100	.....	.....	.....	.....	23,711	792	22,919
	October	Nebraska	17,156	5,388	.....	.....	.....	.....	.....	.....
		Minnesota	250	.....	.....	.....	.....	.....	.....	.....
		South Dakota	50	.....	.....	.....	.....	22,844	4,288	18,556
	November	Nebraska	9,827	3,557	.....	.....	.....	.....	.....	.....
		Minnesota	250	.....	.....	.....	.....	13,634	2,425	11,209
	December	Nebraska	15,158	3,787	.....	.....	.....	18,945	3,874	15,071
			86,606	59,219	.....	.....	.....	145,825	27,434	118,391

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co., Council Bluffs, Iowa

Schedule No. 11

Consolidated Statement of Deductions for Gasoline Shipments out of Iowa for period from January 1, 1929, to March 31, 1932

Year	Month	To	From: Council Bluffs bulk	Sioux City bulk	Shenandoah bulk	Esterville bulk	Milford bulk	Total Allowable deduction	Deduction reported	Over or under deducted
1931	January	Nebraska	14,010	3,908				17,918	7,182	10,736
	February	Nebraska	17,710	3,713						
		Minnesota	250					21,673	3,843	17,830
	March	Nebraska	14,910	4,488				19,398	4,147	15,251
	April	Nebraska	18,240	4,402	1,107					
		South Dakota		675						
		Minnesota	250					24,674	4,378	20,296
	May	Nebraska	17,773	4,169	369					
		South Dakota		310				22,621	77,671	55,050
	June	Nebraska	12,730	4,209	2,634					
		South Dakota		2,942				22,515	6,723	15,792
	July	Nebraska	13,165	5,317	4,585					
		South Dakota		4,006				27,673	11,037	16,636
	August	Nebraska	16,145	5,797	3,765					
		Minnesota				2,386		28,093	11,111	16,982
	September	Nebraska	8,372	8,017	315					
		Minnesota				1,544		18,248	7,981	10,267
	October	Nebraska	10,535	13,472						
		Minnesota				922		24,929	9,808	15,121
	November	Nebraska	9,065	5,420	2,090					
		Minnesota				4,633		21,208	20,501	707
	December	Nebraska	6,830	1,573	2,505					
		Minnesota	110				3,360	14,378	6,621	7,757
			160,095	73,018	17,370	9,485	3,360	263,328	171,003	92,325

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Year	Month	To	From: Council Bluffs bulk	From: Sioux City bulk	From: Shenandoah bulk	From: Esterville bulk	From: Milford bulk	Total Allowable deduction	Deduction reported	Over or under deducted
1932	January	Nebraska	4,230	514	1,245	.....	.....	.....	.....	.....
		Minnesota	.....	.....	.....	.....	3,360	9,349	5,936	3,413
	February	Nebraska	3,515	420	2,070	.....	.....	.....	.....	.....
		Minnesota	.....	.....	.....	2,254	1,120	9,379	4,447	4,932
	March	Nebraska	5,242	1,550	1,254	.....	.....	.....	.....	.....
		Minnesota	110	.....	.....	1,766	.....	9,922	7,216	2,706
			13,097	2,484	4,569	4,020	4,480	28,650	17,599	11,051

Summary

1929	101,620	37,718	.....	.....	Records not available	139,338	137,324	2,014
1930	86,606	59,219	.....	.....	.....	145,825	27,434	118,391
1931	160,095	73,018	17,370	9,485	3,360	263,328	171,003	92,325
Three Months Ended March 31, 1932	13,097	2,484	4,569	4,020	4,480	28,650	17,599	11,051
	361,418	172,439	21,939	13,505	7,840	577,141	353,360	223,781

Tax Computation

Allowable Deduction—Gross Gallonage	577,141
Evaporation and Loss (3%)	17,314
Allowable Deduction—Net Gallonage	559,827
Deduction Reported	353,360
Under Deducted Gallonage—Net	206,467
Amount of Tax, 3¢ per gallon, on Under Deducted Gallonage	6,194.01

Accompanying and forming part of our Report of August 9, 1932 and subject to the Comments contained therein

[fol. 290] State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co.

Council Bluffs, Iowa

Schedule No. 13

Deductions for Tax Paid in Error

Date unloaded	Where unloaded	Car number	Gallonage	Explanation
Iowa:				
2-27-30	Sioux City, Ia	NATX 7843	8,090	Duplicate payment
3-22-30	Gowrie, Ia	" 1857	8,103	Kerosene (Anderson-Prichard)
8-12-30	Council Bluffs, Iowa	GATX 20142	7,955	Duplicate payment
8-19-30	Gowrie, Ia	NTAX 1840	8,003	Kerosene (Anderson-Prichard)
9- 1-30	Sioux City, Ia	GATX 13606	8,030	Duplicate payment
			40,181	

Tax Computation

Over Reported Gallonage	40,181
Evaporation and Loss (3%)	1,205
Net Over Reported Gallonage	38,976
Amount of Tax, Deductible, 3¢ per Gallon on Net Gallonage	1,169.28

Nebraska:					
3-31-30	Norfolk, Nebr	CHIX	1145	8,168	Kerosene (Refinery)

Tax Computation

Over Reported Gallonage	8,168
Evaporation and Loss (3%)	245
Net Over Reported Gallonage	7,923
Amount of Tax, Deductible, 4¢ per Gallon on Net Gallonage	316.92

Accompanying and forming part of our Report of August 9, 1932 and subject to the Comments contained therein.

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of MonaMotor Oil Co.

Council Bluffs, Iowa

Schedule No. 14

Tank Cars of Gasoline and Casinghead Gasoline Unloaded at the Refinery and Reported to State of Nebraska—Deducted from Omaha Bulk Schedule No. 7

Date received	Car	Commodity	Gallonage reported
Nov. 7, 1929	GATX 6983	Casinghead	8,101
Dec. 9, 1929	GATX 6693	"	8,072
Jan. 13, 1930	GATX 6372	"	8,091

Date received	Car	Commodity	Gallonage reported
Jan. 21, 1930	GATX 6165	"	8,088
Jan. 28, 1930	GATX 6132	"	8,105
Feb. 10, 1930	GATX 6549	"	8,077
Feb. 18, 1930	GATX 6551	"	8,064
Feb. 3, 1930	CHIX 1145	Gasoline	8,168
Feb. 10, 1930	NATX 15230	"	4,566
Mar. 3, 1930	GATX 5273	Casinghead	8,077
Apr. 9, 1930	GATX 6505	"	8,080
Oct. 16, 1930	BIGX 2263	"	8,095
Oct. 24, 1930	BIGX 2201	"	8,095
Nov. 7, 1930	BIGX 2303	"	8,159
Dec. 4, 1930	SCNX 607	"	8,097
Jan. 27, 1931	SCNX 720	"	8,114
Feb. 18, 1931	SCNX 552	"	8,130
June 19, 1931	GATX 6089	"	8,125
June 23, 1931	BIGX 2840	Gasoline	8,060
June 23, 1931	BIGX 2837	"	8,061
June 20, 1931	BIGX 2828	"	8,061
June 20, 1931	BIGX 2842	"	8,065
June 20, 1931	BIGX 2734	"	8,055
June 23, 1931	BIGX 2835	"	8,063
June 29, 1931	BIGX 2827	"	8,062
June 30, 1931	BIGX 3939	"	10,100
June 30, 1931	BIGX 2825	"	8,060
June 30, 1931	BIGX 2833	"	8,064
July 2, 1931	BIGX 2842	"	8,065
July 1, 1931	BIGX 2830	"	8,066
July 2, 1931	BIGX 2841	"	8,062
July 8, 1931	BIGX 2828	"	8,061
July 8, 1931	BIGX 2840	"	8,060
July 10, 1931	BIGX 3934	"	10,104
July 10, 1931	BIGX 1504	"	10,116
July 6, 1931	GATX 6693	Casinghead	8,072
July 6, 1931	SCNX 711	"	8,114

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July 11, 1931	BIGX 3939	Gasoline	10,100
July 11, 1931	BIGX 2674	"	8,072
July 11, 1931	BIGX 2827	"	8,062
July 14, 1931	MMKX 103	"	6,050
July 14, 1931	BIGX 2829	"	8,064
July 11, 1931	BIGX 2857	"	8,063
July 11, 1931	BIGX 2634	"	8,075
July 14, 1931	BIGX 401	"	8,043
July 14, 1931	BIGX 2824	"	8,062
July 25, 1931	SCNX 712	Casinghead	8,123
July 25, 1931	SCNX 699	"	8,123
Aug. 22, 1931	GATX 6462	"	8,125
Oct. 19, 1931	SCNX 518	"	8,151
Oct. 21, 1931	BIGX 2839	Gasoline	8,065
Oct. 21, 1931	BIGX 2842	"	8,065
Oct. 20, 1931	BIGX 2785	"	8,064
Oct. 21, 1931	BIGX 2828	"	8,061
Oct. 20, 1931	BIGX 2841	"	8,062
Oct. 20, 1931	BIGX 2739	"	8,055
Oct. 20, 1931	BIGX 2825	"	8,060
Oct. 21, 1931	BIGX 2812	"	8,066
Oct. 28, 1931	BIGX 2462	"	8,095
Oct. 28, 1931	BIGX 2835	"	8,063
Oct. 24, 1931	ASIX 1562	"	8,192
Oct. 27, 1931	BIGX 2834	"	8,060
Oct. 27, 1931	BIGX 2832	"	8,063
Oct. 28, 1931	BIGX 2831	"	8,056
Oct. 21, 1931	BIGX 2708	"	8,081

Date received	Car		Commodity	Gallonage reported
Nov. 2, 1931	BIGX	2708	"	8,081
Nov. 3, 1931	BIGX	2829	"	8,064
Nov. 3, 1931	BIGX	2838	"	8,062
Nov. 4, 1931	BIGX	2739	"	8,055
Nov. 7, 1931	BIGX	2817	"	8,069
Nov. 9, 1931	BIGX	2741	"	8,060
Nov. 9, 1931	BIGX	2843	"	8,060
Nov. 9, 1931	BIGX	2853	"	8,060
Nov. 7, 1931	BIGX	2839	"	8,065
Nov. 9, 1931	BIGX	2832	"	8,063
Nov. 9, 1931	BIGX	2836	"	8,063
Nov. 9, 1931	BIGX	2829	"	8,064
Nov. 7, 1931	BIGX	2837	"	8,061
Nov. 3, 1931	BIGX	2840	"	8,060
Nov. 7, 1931	BIGX	2816	"	8,065
Nov. 25, 1931	SCNX	706	Casinghead	8,114
Nov. 30, 1931	BIGX	2734	"	8,055
Nov. 30, 1931	BIGX	2840	Gasoline	8,060
Dec. 5, 1931	BIGX	2639	"	8,087
Dec. 4, 1931	BIGX	2791	"	8,061
Dec. 18, 1931	SCNX	703	Casinghead	8,227
Dec. 24, 1931	GATX	29452	Gasoline	8,102
Dec. 26, 1931	GATX	29565	"	8,106
Dec. 24, 1931	GATX	29435	"	8,105
Dec. 30, 1931	GATX	29594	"	8,155
Dec. 26, 1931	BIGX	2843	"	8,063
Jan. 6, 1932	GATX	29328	"	8,105
Jan. 7, 1932	GATX	29522	"	8,108
Jan. 6, 1932	GATX	29314	"	8,108
Jan. 7, 1932	GATX	29401	"	8,104
Jan. 8, 1932	GATX	29302	"	8,102
Jan. 8, 1932	GATX	29365	"	8,108
Jan. 9, 1932	GATX	29317	"	8,102
Jan. 9, 1932	GATX	29473	"	8,104
Jan. 9, 1932	GATX	29367	"	8,102
Jan. 1, 1932	GATX	29687	"	8,106
Jan. 1, 1932	GATX	29601	"	8,106
Jan. 14, 1932	GATX	15888	"	8,105
Jan. 23, 1932	ACCX	1065	Casinghead	8,091
Jan. 28, 1932	BIGX	2841	Gasoline	8,062
Jan. 29, 1932	BIGX	2746	"	8,050
Jan. 30, 1932	BIGX	424	"	8,047
Feb. 9, 1932	ASIX	1395	"	8,187
Mar. 22, 1932	REPX	191	Casinghead	8,076
Mar. 29, 1932	REPX	159	"	8,078
				891,834

Accompanying and forming part of our Report of August 9, 1932 and subject to the Comments contained therein.

[fol. 292]

State of Iowa

Gasoline Tax Department—State Treasurer

Audit of Mona Motor Oil Co.

Council Bluffs, Iowa

Schedule No. 15

Cars Reported to State of Nebraska Which Were Empty or Contained Commodities Other Than Gasoline—Deducted from Omaha Bulk Report—Schedule No. 7

Month reported	Car		Commodity or condition of car per car records and R. R. records	Gallonage reported
Nov. 1929	CHIX	1074	Empty	8,124
Nov. 1929	CHIX	1073	"	8,123
Nov. 1929	CHIX	1074	"	8,124
Nov. 1929	CHIX	1071	"	8,120
Dec. 1929	CHIX	1073	Empty or Kerosene	8,123
Dec. 1929	MMKX	104	Gasoline to Co. B. (Reported to Iowa)	6,048
Dec. 1929	CHIX	1073	Empty or Kerosene	8,123
Dec. 1929	CHIX	1074	Empty or Wax Oil	8,129
Dec. 1929	MMKX	104	Gasoline to Co. B. (Reported to Iowa)	6,048
Dec. 1929	CHIX	1074	Distillate	8,129
Dec. 1929	MMKX	104	Gasoline to Co. B. (Not reported to Iowa)	6,048
Jan. 1930	CHIX	1074	Distillate	8,129
Jan. 1930	CHIX	1073	Kerosene	8,123
Jan. 1930	CHIX	1073	Empty or Wax Oil	8,123
Jan. 1930	NATX	11184	Empty or Gas Oil	8,056
Feb. 1930	GATX	6165	C. H. Gas—Reported Twice	8,088
Feb. 1930	CHIX	1073	Empty	8,123
Mar. 1930	CHIX	1074	Empty	8,129
Mar. 1930	CHIX	1065	Empty	8,167
Mar. 1930	CHIX	1073	Empty	8,123
Mar. 1930	CHIX	1145	Empty or Gasoline to Co. B	8,118
Mar. 1930	CHIX	1073	Empty	8,123
May 1931	BIGX	6970	No car this description	8,000
				180,441

Accompanying and forming part of our Report of August 9, 1932 and subject to the Comments contained therein.

EXHIBIT 3.

GTD Form No. 14-A

Note: Be sure to fill out statement on reverse side.

Report of Motor Vehicle Fuel Imported

Into the State of Iowa

By ..... P. O. Address .....

during the month of ..... 193 .....

Sheet No. .....

Date Unloaded	Station Where Unloaded	Tank Car			Other Container (B. or T. W.) or Pipe Line	Invoiced Gallonage	Name of R. R. or Other Carrier
		Initial	Number				
							FILED
							Feb. 6, 1933.
							N. F. REED

1.	Invoiced gallonage of motor vehicle fuel imported into IOWA		(This space reserved for office of the TREASURER OF STATE
	DEDUCTIONS		
2.	Evaporation and loss (not to exceed 3% of gallonage reported as item 1).		
3.	Gallonage sold and delivered outside the State of Iowa (itemized on Form No. 15 and attached hereto)		
4.	Sales to U. S. Government (as shown on certificates on form 17 or U. S. form No. 44)		
5.	TOTAL DEDUCTIONS		
6.	Net gallonage on which license fee is due, (item 1, less 2, 3 and 4)		
7.	Amount of license fee due at 3c per gallon, on item 6,		$
8.	Penalty (10%)		$
9.	TOTAL		$

Cash Book Entry No.

Complete Reverse Side

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THIS REPORT CONSISTS OF _____ SHEETS

I (or we) being duly sworn state that the foregoing is a true and correct statement of the motor vehicle fuel imported into the State of Iowa during the calendar month of _____ 193____, by the undersigned, remittance being transmitted herewith for the amount shown as item 9 on reverse side.

Name of person, Assn., Corp., or Partnership _____

By _____

Title _____

Postoffice address _____
City or Town

State of Iowa,
County of _____ } ss.

Subscribed and sworn to before me this _____ day of _____ 193____

_____
Notary Public.

Note.—The law prescribes that this report be filed in the office of the Treasurer of State at Des Moines, Iowa, with remittance to cover, on or before the twentieth day of each calendar month for the preceding calendar month. A penalty of 10% of the amount due immediately accrues and is due and payable if the prescribed remittance is not received by the Treasurer of State on or before the twentieth of the month.

Remittance should be payable to R. E. Johnson, Treasurer of State.

GTD Form No. 14-A

2

EXHIBIT 4.

Statement of Sales of Motor Vehicle Fuel
Sold and Delivered Outside the State of Iowa

By .....

on which the Iowa State License Fees have not been collected, attached to and forming a part of the report filed for the month ending ....., 19....

Date of Delivery	Ticket or Invoice Number	Name of Purchaser	Address	Gallons Sold

FILED
Feb. 6, 1933.
N. F. REED

If additional space is required use extra sheets.

Report on this form to show all gallonage sold and all deliveries made from stations or warehouses in the state to points outside the state wholly for use outside the state.

CTD Form No. 15

Sec. 8. Any person who shall buy or use any Motor Vehicle Fuel for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the State of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any Motor Vehicle Fuel for cleaning, or dyeing, or for any other commercial use except for propelling vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state shall be reimbursed and repaid the amount of such license fee paid by him, upon presenting to the Treasurer of State a statement accompanied by the original invoices showing such purchase which statement shall set forth the total amount of Motor Vehicle Fuel so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state and the Treasurer of State, shall upon presentation of such invoice, cause to be repaid from the funds collected hereunder, the amount of such license fee paid by such consumer on Motor Vehicle Fuel used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this act shall be filed with the Treasurer of State on blank forms provided by him for that purpose within ninety (90) days after date on which such Motor Vehicle Fuel shall have been purchased as shown by invoice. Any person, firm, or corporation who shall make any false statement in connection with an application for the refund of any money or license fee as herein provided or who shall collect or cause to be repaid to him or any person any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed One Thousand ($1,000.00) Dollars. (Chap. 6, 41st G. A.)

Sec. 10. The refunds provided for in section eight (8) of this act shall be made quarterly by the Treasurer of State. Claims for refunds shall be made on blanks provided by the Treasurer of State and under such proofs under oath as he may prescribe. The Auditor of State shall issue his warrants for refunds certified to him by the Treasurer of State.

To the Claimant

WHEN BUYING MOTOR VEHICLE FUEL

Demand sales slips or invoices so that you can attach them to this claim.

Demand duplicate invoices if you want one for your own file.

Be sure that price of Motor Vehicle Fuel and amount of license fee paid by you are indicated on your sales slip invoice, or that the invoice shows that the license fee was included in the price charged.

NO REFUND CLAIM WILL BE APPROVED

Unless original sales slips or invoices are attached thereto.

Unless Motor Vehicle Fuel has been entirely consumed.

Unless the purpose for which said Motor Vehicle Fuel was used is clearly indicated.

Unless said claim is received by The Treasurer of State within 90 days from date of purchase of Motor Vehicle Fuel.

Unless complete information is given in said claim and the same is properly sworn to.

Unless original sales slips show Motor Vehicle Fuel has been paid for, including license fee.

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When Properly Completed, Mail to RAY E. JOHNSON, Treasurer of State, Des Moines, Iowa

Application for Refund of License Fee Paid on Motor Vehicle Fuel Purchased

NOTE: READ THE INSTRUCTIONS BEFORE MAKING OUT YOUR CLAIM.

To the Treasurer of the State of Iowa,
Des Moines.

Under the provisions of chapter 251-A1, Code 1927, as amended, I hereby make application for reimbursement for the amount of license fee paid by me on Motor Vehicle Fuel purchased as indicated:

1. Total number of gallons of Motor Vehicle Fuel (as shown by attached original invoices) .....
2. Total number of gallons of Motor Vehicle Fuel used for vehicles upon the public highway .....
3. Number of gallons of Motor Vehicle Fuel on which reimbursement of license fee is claimed .....
4. Purpose for which Motor Vehicle Fuel for which reimbursement is claimed was used (If in tractor, explain for what tractor was used)

.....

.....

5. Amount of reimbursement claimed (at three cents per gallon) ..... $
6. Have you paid for Motor Vehicle Fuel covered by the attached invoices, including license fees? (Answer yes or no)

I, ... being duly sworn on oath state, that the above is a true and correct statement and that the Motor Vehicle Fuel purchased and covered by the attached invoices has been paid for by me including license fee; that the Motor Vehicle Fuel covered by invoices accompanying this claim has been entirely consumed; that reimbursement has not been received for the license fee paid on any Motor Vehicle Fuel included in this application, nor has application therefor been previously filed.

Signature of Claimant .....

Street or R. F. D. No. .....

Post Office Address .....

(Write Name and Address Plainly)

State of Iowa, }
County of ..... } ss.

On this ..... day of ..... A. D. 193 . before me, a Notary Public in and for said County, personally appeared ..... to me known to be the identical person named in and who executed the foregoing application for refund of Motor Vehicle Fuel license fee.

Notary Public in and for

..... County, Iowa.

INSTRUCTIONS

(In conformity with the opinion of the Attorney General dated October 9th 1925)

1. If the Motor Vehicle Fuel was used in lamps or stoves, reimbursement is authorized only to the consumer. Dealers must collect the license fee on all Motor Vehicle Fuel sold regardless of the purpose for which it is to be used.
2. If the Motor Vehicle Fuel, or any part of it, was used in a vehicle propelled by the motive power utilizing Motor Vehicle Fuel which vehicle was operated in whole or in part upon the public highways, the claimant must indicate on the application the gallonage on which reimbursement is claimed and which was used in propelling such vehicle in the performance of work other than upon the public highway. A tractor is classified as a motor vehicle.

Reimbursement is not authorized on any gallonage used by

1. Tractors owned by individuals or companies used in road construction or maintenance
2. Tractors or other motor vehicles used in transporting agriculture products to market.

APPLICATION FOR REIMBURSEMENT MUST BE FILED IN THE OFFICE OF THE TREASURER OF STATE WITHIN 90 DAYS AFTER DATE ON WHICH THE PURCHASE WAS MADE AND MUST BE ACCOMPANIED BY THE ORIGINAL INVOICE INDICATING THAT THE IOWA STATE LICENSE FEE WAS PAID.

Read Sec. 8 of Chapter 6, Laws of the 41st G. A. as amended, printed on the other side.

(TD) Form 7

GIVE YOUR POSTOFFICE ADDRESS

[fol. 296] Exhibits 6, 7, 8, 9 and 10 were duly offered in evidence as shown by the record heretofore made and are not again attached, because each is set out verbatim in the statement of the evidence.

[fol. 297] Exhibit 11 consists of the reports made by the MonaMotor Oil Company to the Treasurer of the State of Iowa for the months of June, July, September, October and November, 1929, each report covering one month. Each of these reports were on the same form and contained substantially the same information. The report for the month of June, 1929, is as follows:

(Here follows Exhibit 11, side folios 298-303)

Exhibit 11

GTD Form No. 14-A

Report of Motor Vehicle Fuel Imported

Into the State of Iowa

Note: Be sure to fill out statement on reverse side.

By Mona Motor Oil Co. P. O. Address Council Bluffs, Iowa

during the month of June 1929

Sheet No. 1

Date Unloaded	Station Where Unloaded	Tank Car Initial	Tank Car Number	Other Container (B. or T. W.) or Pipe Line	Invoiced Gallonage	Name of R. R. or Other Carrier
6/4	Sioux City	CHIX	1074		8079	Burl
6/3	Co. Bluffs	NATX	1489		8137	"
6/7	"	"	206		7981	"
6/4	"	"	5091		8010	"
6/4	"	"	5282		7996	"
6/3	"	"	889		8076	"
6/6	Manson	"	5007		8037	I. C.
6/10	Rembrandt	AJAX	2005		8037	M. S. L.
6/3	Sioux City	NATX	5142		8048	Burl
6/4	Storm Lake	"	5220		8061	I. C.
6/10	Dunlap	"	7859		8035	N. W.
6/7	Milford	MMKX	103		6013	Milw
6/10	Co. Bluffs	NATX	7898		8033	Burl
6/7	Ft. Dodge	"	1403		8123	M. & S. L.
6/11	Spencer	"	1289		8046	M. & S. L.
6/12	Rembrandt	"	7869		8016	"
6/10	Storm Lake	"	5000		7992	I. C.
6/22	Fonda	"	5125		7992	"
6/10	Gowrie	"	5201		8012	Milw
6/11	Co. Bluffs	MMKX	104		6000	U.P.
8/15	"	NATX	7834		8031	Burl

1. Invoiced gallonage of motor vehicle fuel imported into IOWA

(This space reserved for office of the TREASURER OF STATE)

DEDUCTIONS

2. Evaporation and loss (not to exceed 3% of gallonage reported as item 1).
3. Gallonage sold and delivered outside the State of Iowa (itemized on Form No. 15 and attached hereto)
4. Sales to U. S. Government (as shown on certificates on form 17 or U. S. form No. 44)

TOTAL DEDUCTIONS

5. Net gallonage on which license fee is due, (item 1, less 2, 3 and 4)
6. Amount of license fee due at 3c per gallon on item 6 $
7. Penalty (10%) $
8. TOTAL $

Cash Book Entry No.

Complete Reverse Side

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I (or we) being duly sworn state that the foregoing is a true and correct statement of the motor vehicle fuel imported into the State of Iowa during the calendar month of ..... 193....., by the undersigned, remittance being transmitted herewith for the amount shown as item 9 on reverse side.

Name of person, Assn., Corp., or Partnership Mona Motor Oil Company

By E. L. Walters

Title Traffic Manager

Postoffice address Council Bluffs
City or Town

State of Iowa,
County of Pottawattamie } ss.

Subscribed and sworn to before me this 13 day of July, 1929 193

(SEAL).

B. F. Hill
Notary Public.

Note.—The law prescribes that this report be filed in the office of the Treasurer of State at Des Moines, Iowa, with remittance to cover, on or before the twentieth day of each calendar month for the preceding calendar month. A penalty of 10% of the amount due immediately accrues and is due and payable if the prescribed remittance is not received by the Treasurer of State on or before the twentieth of the month.

Remittance should be payable to R. E. Johnson, Treasurer of State.

GTD Form No. 14-A

GTD Form No. 14-A

Note: Be sure to fill out statement on reverse side.

Report of Motor Vehicle Fuel Imported

Into the State of Iowa

By ..... P. O. Address .....

during the month of ..... 193 .....

Sheet No. .....

Date Unloaded	Station Where Unloaded	Tank Car Initial	Tank Car Number	Other Container (B. or T. W.) or Pipe Line	Invoiced Gallonage	Name of R. R. or Other Carrier
6/17	Aspinwall	NATX	15111		8182	Milw
6/20	Manson	"	15106		7948	I.C.
6/20	Mallard	"	5250		7965	M. & S.L.
6/21	Storm Lake	"	1435		7967	I.C.
6/21	Newell	"	7804		7996	"
6/21	Jefferson	"	873		8060	N.W.
6/20	Co.Bluffs	PGX	1602		7975	Burl
6/18	Co.Bluffs	CHIX	1073		8075	U.P.
6/24	"	NATX	5003		8011	Burl
6/29	Sioux City	"	4269		7997	"
6/25	Storm Lake	"	5036		7951	I.C.
6/27	Milford	"	1039		8281	Milw.
6/27	Ft.Dodge	"	5110		7966	M. & S.L.
6/22	Gowrie	"	5211		7963	N.W.
6/25	Peterson	"	5234		7965	N.W.
6/21	Co.Bluffs	"	987		8210	Burl
6/28	"	"	5285		7944	"
6/28	"	"	495		7980	"
6/28	Dunlap	"	5297		7920	N.W.
6/27	Carroll	ALTX	123		7986	N.W.

1.	Invoiced gallonage of motor vehicle fuel imported into IOWA		
	DEDUCTIONS		
2.	Evaporation and loss (not to exceed 3% of gallonage reported as item 1).		
3.	Gallonage sold and delivered outside the State of Iowa (itemized on Form No. 15 and attached hereto)		
4.	Sales to U. S. Government (as shown on certificates on form 17 or U. S. form No. 44)		
5.	TOTAL DEDUCTIONS		
6.	Net gallonage on which license fee is due, (item 1, less 2, 3 and 4)		
7.	Amount of license fee due at 3c per gallon on item 6,		$
8.	Penalty (10%)		$
9.	TOTAL		$

(This space reserved for office of the TREASURER OF STATE)

Cash Book Entry No.

Complete Reverse Side

I (or we) being duly sworn state that the foregoing is a true and correct statement of the motor vehicle fuel imported into the State of Iowa during the calendar month of ..... 193....., by the undersigned, remittance being transmitted herewith for the amount shown as item 9 on reverse side.

Name of person, Assn., Corp., or Partnership ..... Mona Motor Oil Company .....

By ..... E. L. Walters .....

Title ..... Traffic Manager .....

Postoffice address ..... Council Bluffs .....
City or Town

State of Iowa,

County of ..... Pottawattamie ..... } ss.

Subscribed and sworn to before me this ..... 13 ..... day of ..... July, 1929 ..... 193....

(SEAL)

..... B. F. Hill .....
Notary Public.

Note.—The law prescribes that this report be filed in the office of the Treasurer of State at Des Moines, Iowa, with remittance to cover, on or before the twentieth day of each calendar month for the preceding calendar month. A penalty of 10% of the amount due immediately accrues and is due and payable if the prescribed remittance is not received by the Treasurer of State on or before the twentieth of the month.

Remittance should be payable to R. E. Johnson, Treasurer of State.

GTD Form No. 14-A

GTD Form No. 14-A

Note: Be sure to fill out statement on reverse side.

Report of Motor Vehicle Fuel Imported

Into the State of Iowa

By ..... P. O. Address .....

during the month of ..... 193..

Sheet No. .....

Date Unloaded	Station Where Unloaded	Tank Car Initial	Tank Car Number	Other Container (B. or T. W.) or Pipe Line	Invoiced Gallonage	Name of R. R. or Other Carrier
6/28	Sioux City	NATX	5091		7935	Burl.
6/14	Co. Bluffs	" "	7815		8030	"
6/29	"	SPAX	515		8010	U.P.
6/1	"	"	368		8015	"

1.	Invoiced gallonage of motor vehicle fuel imported into IOWA		357085
	DEDUCTIONS		
2.	Evaporation and loss (not to exceed 3% of gallonage reported as item 1).	10715	
3.	Gallonage sold and delivered outside the State of Iowa (itemized on Form No. 15 and attached hereto)	11343	
4.	Sales to U. S. Government (as shown on certificates on form 17 or U. S. form No. 44)		
5.	TOTAL DEDUCTIONS		22056
6.	Net gallonage on which license fee is due, (item 1, less 2, 3 and 4)		335029
7.	Amount of license fee due at 3c per gallon on item 6.		$ 10050.87
8.	Penalty (10%)		$
9.	TOTAL		$

(This space reserved for office of the TREASURER OF STATE)

Cash Book Entry No.

Complete Reverse Side

3612

THIS REPORT CONSISTS OF ..... SHEETS

I (or we) being duly sworn state that the foregoing is a true and correct statement of the motor vehicle fuel imported into the State of Iowa during the calendar month of ..... 193 ....., by the undersigned, remittance being transmitted herewith for the amount shown as item 9 on reverse side.

Name of person, Assn., Corp., or Partnership Mona Motor Oil Company

By E. L. Walters,

Title Traffic Manager

Postoffice address Council Bluffs, Iowa (City or Town) Pottawattamie County

State of Iowa, } ss.
County of Pottawattamie }

Subscribed and sworn to before me this 13 day of July, 1929 193

(SEAL) B? F. Hill

Notary Public.

Note.—The law prescribes that this report be filed in the office of the Treasurer of State at Des Moines, Iowa, with remittance to cover, on or before the twentieth day of each calendar month for the preceding calendar month. A penalty of 10% of the amount due immediately accrues and is due and payable if the prescribed remittance is not received by the Treasurer of State on or before the twentieth of the month.

Remittance should be payable to R. E. Johnson, Treasurer of State.

GTD Form No. 14-A

[fol. 304] State of Nebraska

State Treasurer, Lincoln

Gasoline Tax Report for Month of June, 1929, by MonaMotor Oil Company, Council Bluffs, Iowa, 7-12-29.

Date	Unloading point	Method of delivery: Tank line	Car No.	Barrel	Truck	Gallons
6/8	Fairbury, Nebr.	NATX	1460	..	....	7973
6/6	Omaha, "	"	1257	..	....	8062
6/ 4	" "	ORHX	600	..	....	8030
6/ 3	Beatrice, "	NATX	15146	..	....	7995
6/ 6	Hebron, "	"	5222	..	....	7995
6/13	Omaha "	"	749	..	....	8003
6/13	" "	"	7805	..	....	8031
6/13	" "	"	1705	..	....	8051
6/13	" "	LDLX	1054	..	....	8031
6/17	Geneva "	NATX	7846	..	....	8016
6/11	Omaha "	"	5195	..	....	7990
6/11	" "	CHIX	1075	..	....	8054
6/14	" "	NATX	1995	..	....	8016
6/19	Beatrice "	"	15176	..	....	8180
6/19	Omaha "	"	7871	..	....	7995
6/19	" "	"	7836	..	....	7992
6/22	Fairbury "	"	5210	..	....	7961
6/27	Omaha "	MMKX	104	..	....	6000
6/26	Hebron "	NATX	5222	..	....	7971
6/27	Beatrice "	PARX	468	..	....	8000
6/30	West L Garage, Omaha, Nebr.				4950	
6/30	MonaMotor Oil Co., Nickerson, Nebr.				315	
6/30	Schaefer Oil Co., Omaha, Nebr.				2145	
6/30	American Smelting Co., Omaha, Nebr				425	
6/30	MonaMotor Oil Co., Jackson, Nebr				1512	
6/30	MonaMotor Oil Co., So. Sioux City, Nebr				1238	
6/30	MonaMotor Oil Co., Homer, Nebr				758	

	Gal.
Gallons Imported or Produced, based on capacity of container	169,689
Three per cent deduction on car or barrel lots	4,750
Total Gallons taxable @ 4¢ per gallon	164,939
Certified check or Bank Draft made payable to State Treasurer must accompany report	$6,597.56

[fol. 305] STATE OF IOWA, —

Pottawattamie County, ss:

I, the undersigned, E. L. Walters, being duly sworn (affirm) that the foregoing is a true return of the amount of tax due for the month of June, 1929.

(Firm:) MonaMotor Oil Company, by E. L. Walters.

Subscribed and sworn to before me this 13th day of July, 1929. B. F. Hill, Notary Public. (Seal.)

[fol. 306] Exhibit 12 consists of the reports filed by the MonaMotor Oil Company with the Treasurer of the State of Iowa for the months of January, February, March, April,

May, June, July, August, September, October and November, 1930, and January, February, March and April, 1931. Each report related to one month and were all in the same form and contained substantially the same information. The report for the month of January, 1930, which illustrates the form and character of the reports for each month is as follows:

(Here follows Exhibit 12, side folios 307-310)

✓ Exhibit 12

GTD Form No. 14-A

Report of Motor Vehicle Fuel Imported

Into the State of Iowa

Note: Be sure to fill out statement on reverse side.

By Mona Motor Oil Company P. O. Address Council Bluffs, Iowa.

during the month of January 1930.

Sheet No. 1

Date Unloaded	Station Where Unloaded	Tank Car Initial	Tank Car Number	Other Container (B. or T. W.) or Pipe Line	Invoiced Gallonage	Name of R. R. or Other Carrier
1/3/30	Mallard	NATX	5947		8046	M&STL
1/2/30	Milford	NATX	5022		8058	Milw
1/2/30	Gowrie	NATX	5019		8066	Ft.D.D.&So.
1/1/30	Co.Bluffs	NATZ	5027		8052	Burl
1/3/30	Sp.City	CHIX	1072		8123	Burl
1/9/30	Jefferson	CHIX	1071		8120	NW
1/6/30	Co.Bluffs	NATX	5816		8049	Burl
1/11/30	Ft.Dodge	NATX	5838		8058	M&STL
1/2/30	Co.Bluffs	GATX	6176		8088	IC
1/9/30	Co.Bluffs	NATX	5707		8045	Burl
1/13/30	Storm Lake	NATX	5858		8096	IC
1/15/30	Dunlap	NATX	5178		8057	NW
1/15/30	Rembrandt	NATX	5941		8037	M&STL
1/8/30	Co.Bluffs	MMKX	104		6049	IC
1/10/30	Co.Bluffs	CHIX	1073		8123	IC
1/7/30	Co.Bluffs	CHIX	1073		8123	IC
1/23/30	Fonda	NATX	1762		8109	IC
1/22/30	Ft.Dodge	NATX	5966		8030	M&ST
1/22/30	Mallard	NATX	5113		8062	M&ST
1/18/30	Gowrie	NATX	4229		8100	FDDM&S
1/24/30	Dunlap	NATX	5455		~~8047~~	NW

1.	Invoiced gallonage of motor vehicle fuel imported into IOWA		~~826811~~
	DEDUCTIONS		
2.	Evaporation and loss (not to exceed 3% of gallonage reported as item 1).	~~9801~~	
3.	Gallonage sold and delivered outside the State of Iowa (itemized on Form No. 15 and attached hereto)	~~1488~~	
4.	Sales to U.S. Government (as shown on certificates on form 17 or U. S. form No. 44)		
5.	TOTAL DEDUCTIONS		~~11289~~ ~~815522~~
6.	Net gallonage on which license fee is due, (item 1, less 2, 3 and 4)		
7.	Amount of license fee due at 3c per gallon on item 6,		$ ~~9466.66~~
8.	Penalty (10%)		$
9.	TOTAL		$

(This space reserved for office of the TREASURER OF STATE)

Cash Book Entry No.

I (or we) being duly sworn state that the foregoing is a true and correct statement of the motor vehicle fuel imported into the State of Iowa during the calendar month of ..... 193 , by the undersigned, remittance being transmitted herewith for the amount shown as item 9 on reverse side.

Name of person, Assn., Corp. or Partnership .....

By .....

Title .....

Postoffice address .....

State of Iowa,

County of.

Subscribed and sworn to before me this ..... day of 193

.....

Notary Public.

Note.—The law prescribes that this report be filed in the office of the Treasurer of State at Des Moines, Iowa, with remittance [illegible] before the twentieth day of each calendar month for the preceding calendar month. A penalty of 10% of the amount due immediately accrues and is due and payable if the prescribed remittance is not received by the Treasurer of State on or before the twentieth of the month.

Remittance should be payable to R. E. Johnson, Treasurer of State.

GTD Form No. 14-A

GTD Form No. 14-A

Note: Be sure to fill out statement on reverse side.

Report of Motor Vehicle Fuel Imported

Into the State of Iowa

By MonaMotor Oil Company P. O. Address Co. Bluffs, Iowa

during the month of January 1930

Sheet No. 2

Date Unloaded	Station Where Unloaded	Tank Car Initial	Tank Car Number	Other Container (B or T W) or Pipe Line	Invoiced Gallonage	Name of R. R. or Other Carrier
1/22/30	Creston	NATX	7467		8028	Burl
1/29/30	Fonda	NATX	5881		8058	IC
1/24/30	Granville	NATX	7817		8094	NW
1/22/30	Jefferson	NATX	5866		8045	NW
1/23/30	Manson	NATX	5865		8045	IC
1/29/30	Milford	NATX	7870		8096	Mil
1/22/30	Peterson	NATX	7381		8028	M&
1/25/30	Rembrandt	NATX	7940		8149	M&ST
1/21	Sioux City	NATX	5272		8056	Burl
1/23/30	Storm Lake	NATX	5296		8040	IC
1/23/30	Cumberland	NATX	5092		8057	Burl
1/20/30	Co. Bluffs	MMKX	104		6049	IC
1/28/30	Co. Bluffs	NATX	1243		8116	Burl
1/21/30	Co. Bluffs	NATX	7580		8034	MoPac
1/22/30	Co. Bluffs	NATX	5811		8052	Burl
1/31/30	Storm Lake	NATX	5754		8045	IC
1/313-	Gowrie	NATX	5929		8049	FDDM&S
1/27/30	Sioux City	NATX	1822		8104	Burl
1/2/30	Cumberland	NATX	7845		8085	Burl
1/30/30	Co. Bluffs	NATX	5700		8040	Burl

1.	Invoiced gallonage of motor vehicle fuel imported into IOWA		326811
	DEDUCTIONS		
2.	Evaporation and loss (not to exceed 3% of gallonage reported as item 1).	9801	
3.	Gallonage sold and delivered outside the State of Iowa (itemized on Form No. 15 and attached hereto)	1488	
4.	Sales to U. S. Government (as shown on certificates on form 17 or U. S. form No. 44)		
	TOTAL DEDUCTIONS	11289	315522
5.	Net gallonage on which license fee is due (item 1, less 2, 3 and 4)		
7.	Amount of license fee due at 3c per gallon on item 6		$ 9465.66
8.	Penalty (10%)		$
9.	TOTAL		$

(This space reserved for office of the TREASURER OF STATE)

Cash Book Entry No.

Similar information was filed for the months of February, March, April, May, June, July, August, September, October, November and December, 1930, and January, February, March, April, 1931.

Complete Reverse Side

309

THIS REPORT CONSISTS OF SHEETS

I (or we) being duly sworn state that the foregoing is a true and correct statement of the motor vehicle fuel imported into the State of Iowa during the calendar month of ..... 193 ..., by the undersigned, remittance being transmitted herewith for the amount shown as item 9 on reverse side.

Name of person, Assn., Corp., or Partnership Monamotor Oil Company

By E. L. Walters

Title Traffic Manager

Postoffice address Council Bluffs, Iowa Pottawattamie County
City or Town

State of Iowa,)

County of Pottawattamie)

Subscribed and sworn to before me this day of February 193 0

Notary Public.

Note.—The law prescribes that this report be filed in the office of the Treasurer of State at Des Moines, Iowa, with remittance to cover, on or before the twentieth day of each calendar month for the preceding calendar month. A penalty of 10% of the amount due immediately accrues and is due and payable if the prescribed remittance is not received by the Treasurer of State on or before the twentieth of the month.

Remittance should be payable to R. E. Johnson, Treasurer of State.

GTD Form No. 14-A

[fol. 311] State of Nebraska, State Treasurer, Lincoln

Gasoline Tax Report for Month of January, 1930 By MonaMotor Oil Company, Council Bluffs, Iowa, Feb. 13, 1930.

Unloading point	Method of delivery				Gallons
	Tank line	Car No.	Barrel	Truck	Gallons
Homer, Nebr	..	....	..	466	....
Jackson, Nebr	..	....	..	719	....
So. Sioux City, Nebr	..	....	..	303	....
				1488	

Inspection Fees on Tank Wagon $.90

	Gals.
Gallons imported or produced, based on capacity of container	217,510
Three per cent deduction on car or barrel lots	6,481
Total gallons taxable — 4¢ per gallon	211,029
Certified check or Bank Draft, made payable to State Treasurer must accompany report	$8,441.16

STATE OF IOWA,
Pottawattamie County, ss:

I, the undersigned E. L. Walters, being duly sworn (affirm) that the foregoing is a true return of the amount of tax due for the month of January, 1930.

(Firm:) MonaMotor Oil Company, by —— ——.

Subscribed in my presence and sworn to before me this 19th day of February, 1930. B. F. Hill, Notary Public. (Seal.)

[fol. 312] Exhibit 13 consists of the monthly reports of the MonaMotor Oil Company made to the Treasurer of the State of Iowa for the month of June, 1928, to May, 1929, inclusive. Each report related to one month and were all in the same form and contained substantially the same information. The report for the month of June, 1928, which illustrates the form and character of the reports for each month is as follows:

[fol. 313] EXHIBIT 13

Report of Gasoline Imported Into the State of Iowa by MonaMotor Oil Company, Council Bluffs, Iowa, During the Month of June, 1928.

Date received	Received at (railroad station where unloaded)	Tank car Initial	Tank car Number	Other container (B. or T. W.)	Invoiced gallonage	Name of R. R. or other carrier
6- 6	Co. Bluffs	MMKX	103 MO		5984	U. P.
6- 8	"	CHIX	1073 "		8054	"
6-12	"	"	1074 "		8070	"
6-11	"	MMKX	104 "		6004	"
6-13	"	VPRX	542 "		8121	"
6-15	"	PARX	1103 "		8043	"
6-18	"	"	1178 "		7981	"
6-21	Aspinwall	"	484 EE		7987	"
6-26	Co. Bluffs	"	921 MO		8033	"
6-23	"	"	230 "		8088	"
6-28	"	"	997 "		8017	"
6-27	"	"	955 "		8023	"
6-23	Manson	"	456 PO		8027	I. C.
6-23	Storm Lake	"	856 PO		8022	"
6-27	Co. Bluffs	EDRX	272 OG		8031	U. P.

This Report Consists of 1 Sheet

1. Invoiced gallonage imported into the state of Iowa as itemized in the foregoing detailed statement ..... 116485 Gals.

Deductions

2. Evaporation and loss (not to exceed 3% of gallonage reported as item 1) ..... 3496 Gals.
3. Gallonage sold and delivered outside the State of Iowa (to be itemized on G. T. D. Form No. 15 and attached hereto) ..... 46685 Gals. 50180 Gals.
5. Total deductions .....
6. Net gallonage on which license fee is due (item 1 less Item 5) .. 66305 Gals.
7. Amount of license fee due at 3¢ per gallon on Item 6 ..... $1989.15
8. Penalty (10%)
9. Total $1989.15

I (or we) being duly sworn states that the foregoing is a true and correct statement of the gasoline imported into the State of Iowa during the calendar month of ——, 19—, by the undersigned, remittance being transmitted herewith for the amount shown as Item 7 above.

(Name of person, Assn., Corp. or Partnership:)
MonaMotor Oil Company, by E. L. Walters, Traffic Manager.

Council Bluffs, Pottawattamie County.

Subscribed and sworn to before me this 19th day of July, 1928. B. F. Hill, Notary Public. (Seal.)

[fol. 314] State of Nebraska

Department of Agriculture

Lincoln

Division of Gasoline Tax Collection

Report for Month of June, 1928 By MonaMotor Oil Company, Council Bluffs, Iowa, 7-14-28.

Unloading		Method of delivery			
Date	Point	Tank line	Car number	Truck	Gallons
June	Omaha	Welch Oil Company		400	....
"	"	West L Garage		4000	....
"	"	Jamieson Oil Co		12700	....
"	"	MonaMotor Service		4630	....
"	"	"	"	9140	....
"	"	"	"	3115	....
"	"	Mulcahy Oil Company		7200	....
"	"	Federal Oil Co		2600	....
"	"	American Oil Co		2900	....
				46685	
6-18	Hebron, Nebr.	MMKX	104	.....	5975
	Fairbury "	PARX	936	.....	8035
	St. Paul "	"	480	.....	7973

Gallons Imported or Produced, based on capacity of container	68668
Two per cent deduction on car load or barrel lots	440
Total Gallons taxable @ 2¢ per gallon	68228
Certified Check or Bank Draft, made Payable to the Department of Agriculture, must accompany report	$1364.56

STATE OF IOWA,
County of Pottawattamie, ss:

I, the undersigned, E. L. Walters, being duly sworn (affirm) that the foregoing is a true return of the amount of tax due for the month of June, 1928.

MonaMotor Oil Company, by E. L. Walters.

Subscribed in my presence and sworn to before me this 14th day of July, 1928. B. F. Hill, Notary Public. (Seal.)

[fol. 315] Exhibit 14 consists of the monthly reports of the MonaMotor Oil Company made to the Treasurer of the State of Iowa for the months of May, June, July, August, September, October, November and December, 1931, and January, March, April and May, 1932. Each report related to one month and were all in the same form and contained substantially the same information. The report for the month of May, 1931, which illustrates the form and character of the reports for each month is as follows:

[fol. 316] EXHIBIT 14

Reported of Gasoline Imported Into the State of Iowa By Mona Motor Oil Company, Council Bluffs, Iowa, During the Month of May, 1931.

Date unloaded	Station where unloaded	Initial	Number	Invoiced gallonage	Name of R. R. or other carrier
5/28/31	Aspinwall	BIGX	2229	8060	CMSTP&P
5/ 6/31	Algona	BIGX	2643	8086½	CMSTP&P
5/ 4/31	Co. Bluffs	BIGX	712	8080	CB&Q
5/ 4/31	Co. Bluffs	BIGX	759	8047	CB&Q
5/16/31	Co. Bluffs	BIGX	704	8044	CB&Q
5/18/31	Co. Bluffs	SCNX	703	8175	IC
5/29/31	Co. Bluffs	BIGX	798	7999	CB&Q
5/25/31	Co. Bluffs	BIGX	705	8031	CB&Q
5/11/31	Co. Bluffs	BIGX	767	7999	CB&Q
5/11/31	Cumberland	BIGX	474	8071	CB&Q
5/26/31	Carroll	BIGX	2846	8060	CNW
5/26/31	Creston	BIGX	2841	7995	CB&Q
5/ 4/31	Dunlap	SCNX	619	8099	NW
5/ 2/31	Dunlap	GATX	6717	7992	CNW
5/ 2/31	Ft. Dodge	GATX	23666	8084	IC
5/ 7/31	Ft. Dodge	BIGX	726	8041	MSTL
5/11/31	Ft. Dodge	BIGX	2417	8100	IC
5/27/31	Ft. Dodge	BIGX	764	8018	MSTL
5/20/31	Fonda	BIGX	723	8044	IC
5/25/31	Fonda	BIGX	412	8002	IC
5/17/31	Fonda	GATX	13606	8111	IC
5/12/31	Gowrie	BIGX	2746	8050	FDDM&S
5/29/31	Gowrie	BIGX	2754	8033	FDDM&S
5/26/31	Jefferson	BIGX	2842	8055	C&NW
5/ 6/31	Manson	BIGX	2842	8075	IC
5/ 7/31	Milford	GATX	14271	8158	CMSTP&P
5/15/31	Milford	BIGX	2625	8078	CMSTP&P
5/25/31	Milford	BIGX	2697	8066	CMSTP&P
5/19/31	Pocahontas	BIGX	2698	8081	RI
5/28/31	Pocahontas	BIGX	2866	8024	CRIP
5/25/31	Pocahontas	BIGX	795	8013	CRIP
5/23/31	Peterson	SCNX	627	8188	CNW
5/22/31	Rembrandt	BIGX	2835	8063	MSTL
5/13/31	Shenandoah	BIGX	2401	8100	CB&Q
5/18/31	Shenandoah	BIGX	2620	8083	CB&Q
5/27/31	Shenandoah	BIGX	755	8015	CB&Q
5/ 4/31	Shenandoah	BIGX	420	8068	CB&Q
5/16/31	Sioux City	BIGX	707	8034	CB&Q
5/ 9/31	Sioux City	SCNX	683	8110	IC
5/10/31	Sioux City	GATX	6462	8125	IC
5/13/31	Sioux City	BIGX	798	8047	CB&Q
5/22/31	Storm Lake	BIGX	2831	8061	IC
5/17/31	Storm Lake	GATX	23119	8154	IC
5/15/31	Storm Lake	BIGX	2738	8022	IC
5/25/31	Storm Lake	BIGX	2840	7983	IC
5/18/31	Whiting	BIGX	2828	8061	NW
5/ 1/31	Whiting	SCNX	663	8140	CNW

1. Invoiced gallonage of gasoline imported into the State of Iowa as itemized in the foregoing detailed statement	379,025 Gals.
Deductions	
2. Evaporation and loss (not to exceed 3% of gallonage reported as Item 1)	11,371 Gals.
3. Gallonage sold and delivered outside the State of Iowa (to be itemized on G. T. D. Form No. 15 and attached hereto)	77,671 Gals.
[fol. 317] 5. Total deductions	89,042 Gals.
5. Net gallonage on which license fee is due (Item 1 less Items 2, 3 and 4)	289,983 Gals.
9. Total	$8,699.49

I, being duly sworn, state that the foregoing is a true and correct statement of the gasoline imported into the State of Iowa during the calendar month of May, 1931, by the undersigned, remittance being transmitted herewith for the amount shown as Item 7 above.

MonaMotor Oil Company, by E. L. Walters, Traffic Manager.

Post-office address: Council Bluffs, Iowa.

STATE OF IOWA,
County of Pottawattamie, ss:

Subscribed and sworn to before me this 13 day of June, 1931.

B. F. Hill, Notary Public. (Seal.)

[fol. 318] State of Nebraska, State Treasurer,
Lincoln

Gasoline Tax Report for Month of May, 1931, by MonaMotor Oil Company, Co. Bluffs, Iowa

6/4/31

Unloading		Method of delivery			
Date	Point	Tank line	Car number	Barrel	Gallons
5/ 6/31	Omaha	BIGX	733		8041
5/ 4/31	Fairbury	BIGX	765		8086
5/ 6/31	Crab Orchard	BIGX	463		8069
5/ 7/31	Eagle	BIGX	2826		8062
5/ 7/31	Fairbury	BIGX	2828		8061
5/11/31	David City	BIGX	2840		8060
5/ 4/31	Beatrice	BIGX	2864		8062
5/ 9/31	Omaha	BIGX	760		8047
5/15/31	Geneva	BIGX	482		8069
5/11/31	Beatrice	BIGX	450		8069
5/14/31	St. Edward	BIGX	2860		8063
5/13/31	Humboldt	BIGX	2767		8052
5/15/31	Nickerson	BIGX	2433		8057
5/14/31	Wymore	BIGX	2462		8095
5/15/31	Fullerton	BIGX	743		8039
5/21/31	Lewiston	BIGX	2867		8061
5/23/31	Fullerton	BIGX	2718		8069
5/22/31	St. Paul	BIGX	2467		8097
5/21/31	Hebron	BIGX	2447		8097
5/20/31	David City	BIGX	2412		8100
5/18/31	Omaha	BIGX	759		8047
5/26/31	Battle Creek	BIGX	2826		8062
5/28/31	Fairbury	BIGX	2834		8060
5/25/31	Fairbury	BIGX	2767		8052
5/18/31	Norfolk	BIGX	2738		8051
5/24/31	Omaha	BIGX	785		8049
5/16/31	Omaha	BIGX	6970		8000
	Omaha Pumped			74,182	
	Jackson			1,890	
	South Sioux City			1,599	
				77,671	217,677

[fol. 319]

Gallons imported or Produced, based on capacity of container, Total	Gal.	295,348
Three per cent deduction on car or barrel lots	Gal.	8,860
Total Gallons taxable @ 4c per gallon	Gal.	286,488
		$11,459.52

STATE OF IOWA,
County of Pottawattamie, ss:

I, the undersigned, E. L. Walters, being duly sworn (affirm) that the foregoing is a true return of the amount of tax due for the month of May, 1931.

MonaMotor Oil Company, by —— ——, Traffic Manager.

Subscribed in my presence and sworn to before me this — day of June, 1931. —— ——, Notary Public.

[fol. 320] STATE OF NEBRASKA

State Treasurer, Lincoln

Gasoline Tax Report for Month of May, 1931

By MonaMotor Oil Company, Council Bluffs, Iowa

6/4/31.

Unloading			Method of delivery		
Date	Point	Tank line	Car No.	Barrel	Gallons
5/ 6/31	Omaha	BIGX	733		8041
5/ 4/31	Fairbury	"	765		8086
5/ 6/31	Crab Orchard	"	463		8069
5/ 7/31	Eagle	"	2826		8062
5/ 7/31	Fairbury	"	2828		8061
5/11/31	David City	"	2840		8060
5/ 4/31	Beatrice	"	2864		8062
5/ 9/31	Omaha	"	760		8047
5/15/31	Geneva	"	482		8069
5/11/31	Beatrice	"	450		8069
5/14/31	St. Edwards	"	2860		8063
5/14/31	Humboldt	"	2767		8052
5/15/31	Nickerson	"	2433		8057
5/14/31	Wymore	"	2462		8095
5/15/31	Fullerton	"	743		8039
5/21/31	Lewiston	"	2867		8061
5/23/31	Fullerton	"	2718		8069
5/22/31	St. Paul	"	2467		8097
5/21/31	Hebron	"	2447		8097
5/20/31	David City	"	2412		8100
5/18/31	Omaha	"	759		8047
5/26/31	Battle Creek	"	2826		8062

6/4/31

Unloading		Method of delivery			
Date	Point	Tank line	Car No.	Barrel	Gallons
5/28/31	Fairbury	BIGX	2834	.....	8060
5/25/31	"	"	2767	.....	8052
5/18/31	Norfolk	"	2738	.....	8051
5/24/31	Omaha	"	785	.....	8049
5/16/31	"	"	6970	.....	8000
	Omaha Pumped			74,182	.....
	Jackson			1,890	.....
	South Sioux City			1,599	.....
					217,677

Gallons imported or produced, based on capacity of container	Gal.	295,348
Three per cent deduction on car or barrel lots	Gal.	8,860
Total gallons taxable @ 4c per gallon	Gal.	286,488
Certified check or bank draft made payable to State Treasurer must accompany report		$1,459.52

STATE OF IOWA,
Pottawattamie County, ss:

I, the undersigned, E. L. Walters, being duly sworn (affirm) that the foregoing is a true return of the amount of tax due for the month of May, 1931.

(Firm:) MonaMotor Oil Company, by —— ——, Traffic Manager.

Subscribed in my presence and sworn to before me this — day of June, 1931. —— ——, Notary Public.

[fol. 321] Exhibit 15 consists of the monthly reports of the MonaMotor Oil Company made to the Treasurer of the State of Iowa for the month of June, July and August, 1932. Each report related to one month and were all in the same form and contained substantially the same information. The report for the month of June, 1932, illustrates the form and character of the reports for each month and is as follows:

[fol. 322] EXHIBIT 15

Report of Motor Vehicle Fuel Imported into the State of Iowa
By MonaMotor Oil Company, Council Bluffs, Iowa,
during the month of June, 1932

Date unloaded	Station where unloaded	Tank car		Invoiced gallonage	Other container B. or T. W. or pipe line
		Initial	Number		
6-24	Aspinwall	PX	76385	8023	
6-24	"	PX	76299	8038	
6-6	Co. Bluffs	PX	76408	8014	
6-7	"	PX	76411	7994	
6-8	"	PX	76407	8022	
6-8	"	PX	76237	8038	
6-9	"	PX	76286	8006	
6-14	"	PX	76247	8026	
6-15	"	PX	76407	8026	
6-16	"	PX	76419	8014	
6-16	"	PX	76403	8013	
6-17	"	PX	76408	8039	
6-21	"	PX	76411	7999	
6-27	"	GATX	14993	8012	
6-28	"	PX	76415	8030	
6-1	Creston	PX	76385	8048	
6-14	"	PX	76401	7996	
6-14	Dunlap	PX	76063	8026	
6-27	Estherville	PX	3848	8003	
6-22	Fonda	PX	76259	8013	
6-18	Fort Dodge	PX	76087	8019	
6-21	"	PX	76449	8016	
6-7	Gowrie	PX	76449	8001	
6-18	"	PX	76117	7993	
6-30	"	PX	76438	7972	
2-21	Iowa City	PX	76384	8011	
6-12	"	PX	76313	7980	
6-9	Jefferson	PX	76438	8001	
6-6	Mason City	PX	76096	8060	
6-8	"	QTX	8436	8017	
6-8	"	PX	76076	8046	
6-8	"	PX	76384	8006	
6-15	Mallard	PX	76382	8006	
6-25	Manson	PX	75947	7988	
6-8	Milford	PX	75991	8000	
6-22	"	PX	76076	8046	
6-22	Mt. Pleasant	PX	76438	8011	
6-14	Pocahontas	PX	75991	8025	
6-15	Rembrandt	PX	76449	8006	
6-15	Rodman	PX	76096	8055	
6-25	Shenandoah	GATX	25643	8013	
6-13	"	PX	76411	8023	
6-22	"	PX	1882	6446	
6-10	Sioux City	PX	3608	8018	
6-15	"	PX	76155	8092	
6-22	"	PX	76237	8047	
6-14	"	PX	76237	8028	
6-24	"	PX	76068	8017	
6-14	Storm Lake	PX	76299	8043	
6-9	Whiting	PX	76416	8006	
6-6	Omaha	PX	75965	7958	
6-7	"	PX	75953	7969	
6-5	"	PX	76403	8043	
6-5	"	PX	76247	8051	
6-6	"	PX	76322	8021	
6-8	"	PX	76067	8095	
6-9	"	PX	76063	8046	

Date unloaded	Station where unloaded	Tank car Initial	Tank car Number	Invoiced gallonage	Other container B. or T. W. or pipe line
6-15	"	PX	76392	8030	
6-9	"	PX	76102	8048	
6-10	"	PX	76298	8029	
6-10	"	PX	76005	8003	
[fol. 323]					
6-17	Omaha	PX	76064	8036	
6-16	"	PX	75955	7988	
6-17	"	PX	76317	8001	
6-16	"	PX	76367	7983	
6-18	"	PX	76469	8002	
6-18	"	PX	76417	7998	
6-18	"	PX	76402	7998	
6-18	"	PX	76397	7998	
6-28	"	PX	4263	7968	
6-28	"	PX	76264	7966	
6-25	"	PX	76315	7991	
June 1932	Davenport	...	.....	....	2,523
Inventory on hand at the Company's Refinery storage, East Omaha, Iowa, June 1, 1932		...	.....	....	18,606 Gal
				575,584	21,129
1. Invoiced gallonage of motor vehicle imported into Iowa			.....	596,713	
Deductions					
2. Evaporation and loss (not to exceed 3% of gallonage reported as item 1)			17,901		
3. Gallonage sold and delivered outside the State of Iowa (Itemized on Form No. 15 and attached hereto)			165,809		
5. Total Deductions			183,710	183,710	
6. Net gallonage on which license fee is due (item 1, less 2, 3 and 4)			.....	413,003	
7. Amount of license fee due at 3c per gallon on item 6			....	$12,390.09	
9. Total				$12,390.09	

I (or we) beinf duly sworn, state that the foregoing is a true and correct statement of the motor vehicle fuel imported into the State of Iowa during the calendar month of June, 1932, by the undersigned, remittance being transmitted herewith for the amount shown as Item 9 on reverse side.

MonaMotor Oil Company, by J. Gordon Fent, Chief Accountant. Postoffice address: Council Bluffs, Iowa.

STATE OF IOWA,
County of Pottawattamie, ss:

Subscribed and sworn to before me this 19th day of July, 1932. W. M. Heath, Notary Public.

[fol. 324] Supplementary Report of Motor Vehicle Fuel Imported

Into the State of Iowa

By MonaMotor Oil Company, during the month of June, 1932

Date unloaded	Station where unloaded	Tank car Initial	Tank car Number	Invoiced gallonage
6-2	Burlington	UTLX	59931	6563
1. Invoiced gallonage of motor vehicle fuel imported into Iowa				6563
Deductions				
2. Evaporation and loss (not to exceed 3% of gallonage reported as item 1)			197	
5. Total deductions				197
6. Net gallonage on which license fee is due (Item 1, less 2, 3 and 4)				6366
7. Amount of license fee due at 3c per gallon on Item 6				$190.98

[fol. 325]

Statement of Sales of Motor Vehicle Fuel Sold and Delivered Outside the State of Iowa, by MonaMotor Oil Company, Council Bluffs, Iowa, on Which the Iowa State License Fees Have Not Been Collected, Attached to and Forming a Part of the Report Filed for the Month Ending June, 1932.

Date of delivery	Ticket or invoice No.	Name of purchaser	Address	Gallons sold
June 6, 1932	.....	Home Oil Co.	Lake Wilson, Minn.	409
June 16, 1932	.....	" " "	" " "	409
June 24, 1932	.....	" " "	" " "	409
June 22, 1932	.....	MonaMotor Oil Co.	Pipestone, Minn.	165
June 2, 1932	.....	On Time Tfr Co.	Omaha, Neb.	6,793
June 29, 1932	.....	Platner Garage	" "	600
June, 1932	(Per attached list)	Deliveries into Nebraska from Omaha Bulk		157,024
				165,809

If additional space is required use extra sheets.

Report on this form to show all gallonage sold and all deliveries made from stations or warehouses in the state to points outside the state wholly for use outside the state.

GTD Form No. 15

[fol. 326]

Ticket Pick-up List

From Omaha, Bulk. Date: June, 1932

Date	Ticket No.	Customer to	Address	Refined Oils			Other Mdse	
				Ethyl	M. M. gas	Comp. gas	Avia. gas	Tr
1	58827	MonaMotor Bulk Sta	Bennington		205	130		
2	58829	"	"	205	80	130		
3	58831	"	"	80	205			
4	58832	"	"		130	205		
6	58835	"	"		205	130		
7	58836	"	"		205	130		
8	58837	"	"		335			
8	58839	"	"		130	205		
10	58841	"	"		130	205	60	
13	58842	"	"		130	205		
14	58843	"	"		130			
14	58845	"	"		130	205		
15	58846	"	"	130	205			
15	58847	"	"		130	205		
16	58849	"	"		130	205		
17	58851	"	"		130	130		
18	58852	"	"		130	205	30	
22	58855	"	"	205	130	80		
22	58856	"	"	130	80	205		
23	58858	"	"		80	130		
24	58860	"	"		80	205		
27	58864	"	"		205	130		
28	58865	"	"		205	130		
29	58866	"	"		205	130		
30	58869	"	"		205	130		
25	58856	MonaMotor Bulk Sta	Nickerson, Neb.			1840		
5-28	58751	54th & Military	Omaha, Neb			180		
6-4	58867	"	"		400	200		
5-31	58779	"	"	200	200	200		
6-1	58782	"	"	200	200	200		
6-2	58786	"	"	200	200	200		

Date	Ticket No.	Customer to	Address	Refined Oils			Other Mdse.	
				Ethyl	M. M. gas	Comp. gas	Avia. gas	Truck
6-3	58788	"		200	200	200		
6-3	58793	"			400	400		
7	58799	"		200	200	200		
9	58809	"		200	200	200		
10	58811	"			400	200		
11	58815	"		200	400			
13	58821	"			400	200		
14	58825	"		200	200	200		
14	58901	"		200	200	200		
20	58877	"		200	200	200		
16	58909	"		200	200	200		
18	58914	"			200	285		
22	58879	"		200	200	200		
21	58923	"			400	200		
24	58955	"		510	510	250		
28	58968	"			360			
27	58978	"			205	400		
1	58759	14th & Howard		200	200	200		
10	58773	"			600			
3	58787	"			400	200		
7	58797	"		200	200	200		
8	58802	"		200	400			
10	58810	"		200		400		
13	58823	"			600			
14	58933	"		600				
17	58912	"			600			
16	58937	"			200	200		
23	58883	"		400		200		
21	58922	"		200	200	200		
22	58941	"			400			
24	58953	"		360	720			
27	58961	"			510			
27	58981	"				200		
28	58984	"			200	205		

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11	58814	31st & Douglas	Omaha, Neb	200	400	...	...	...	...	...	...
11	58818	"	"	...	...	200	...	...	...	...	...
14	58904	"	"	200	...	200	...	...	...	...	...
13	58927	"	"	...	200	200	...	...	...	...	...
16	58908	"	"	...	400	200	...	...	...	...	...
18	58917	"	"	...	200	200	...	...	...	...	...
22	58882	"	"	200	...	200	...	...	...	...	...
23	58885	"	"	...	400	200	...	...	...	...	...
25	58942	"	"	200	305	...	...	...	...	...	...
27	58963	"	"	...	360	210	...	...	...	...	...
29	58987	"	"	...	200	...	...	...	...	...	...
5-31	58752	30th & Wirt	"	...	400	200	...	...	...	...	...
6-3	58762	"	"	200	200	200	...	...	...	...	...
11	58774	"	"	200	200	200	...	...	...	...	...
8	58805	"	"	...	400	200	...	...	...	...	...
17	58911	"	"	200	200	200	...	...	...	...	...
20	58920	"	"	...	400	200	...	...	...	...	...
25	58943	"	"	205	400	...	...	...	...	...	...
24	58951	"	"	...	250	400	...	...	...	...	...
27	58965	"	"	...	...	250	...	...	...	...	...
29	58985	"	"	...	200	205	...	...	...	...	...
3	58763	16th & Evans	"	200	200	200	...	...	...	...	...
11	58775	"	"	...	200	...	...	...	...	...	...
5-31	58776	"	"	200	200	200	...	...	...	...	...
6-7	58800	"	"	200	200	200	...	...	...	...	...
11	58819	"	"	...	...	200	...	...	...	...	...
18	58916	"	"	...	100	200	...	...	...	...	...
15	58934	"	"	200	200	...	...	...	...	...	...
22	58880	"	"	200	200	200	...	...	...	...	...
27	58967	"	"	...	...	210	...	...	...	...	...
25	58976	"	"	200	200	205	...	...	...	...	...
29	58973	"	"	210	250	...	...	...	...	...	...
3	58760	27th & Farnam	"	200	200	200	...	...	...	...	...
1	58757	30th & Ames	"	...	200	400	...	...	...	...	...
6	58770	"	"	200	200	200	...	...	...	...	...
7	58771	"	"	...	...	200	...	...	...	...	...

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Date	Ticket No.	Customer to	Address	Refined Oils			Other Mdse.	
				Ethyl	M. M. gas	Comp. gas	Avia. gas	Truck
3	58789	30th & Ames	Omaha, Neb.	200	200	200	..	..
9	58806	"	"	....	200	400	..	..
11	58813	"	"	200	200	200	..	..
13	58926	"	"	....	200	400	..	..
14	58930	"	"	400	200	....	..	..
20	58921	"	"	....	400	200	..	..
17	58938	"	"	....	200	400	..	..
24	58952	"	"	....	210	400	..	..
27	58966	"	"	510	510	....	..	..
29	58970	"	"	510	720	610	..	..
5-31	58754	16th & Dorcas	"	200	200	....	..	..
6-5	58769	"	"	200	200	200	..	..
10	58772	"	"	200	....	200	..	..
2	58785	"	"	....	200	200	..	..
7	58801	"	"	....	200	200	..	..
9	58808	"	"	....	200	....	..	..
11	58820	"	"	....	200	100	..	..
14	58903	"	"	200	200	200	..	..
20	58876	"	"	200	....	200	..	..
17	58913	"	"	....	....	200	..	..
18	58919	"	"	....	400	....	..	..
23	58884	"	"	....	400	200	..	..
25	58959	"	"	....	360	....	..	..
27	58962	"	"	250	360	210	..	..
4	58765	31st & Douglas	"	200	400	....	..	..
4	58768	"	"	....	....	400	..	..
5-31	58778	"	"	200	200	200	..	..
5-31	58780	"	"	200	200	....	..	..
6-7	58798	"	"	....	200	....	..	..
8	58803	"	"	....	....	200	..	..
5-31	58777	27th & Farnam	"	....	400	200	..	..
6-6	58794	"	"	200	400	....	..	..
10	58812	"	"	200	200	200	..	..
13	58822	"	"	200	200	200	..	..

4	58902	"	"	600				

4	58902	"	"	600				
16	58910	"	"		400	200		
[fol. 328]								
21	58924	"	"		400	200		
27	58964	"	"	510	510	250		
28	56983	"	"	200	200	205		
29	58971	"	"	360	1020			
5-31	58753	15th & Webster	"			200		
6-1	58756	"	"	200	400			
4	58790	"	"			200		
4	58792	"	"			200		
6	58795	"	"		200			
9	58807	"	"		200	200		
13	58928	"	"	200		200		
13	58931	"	"		200			
18	58915	"	"		200			
16	58936	"	"			200		
20	58939	"	"	200				
21	58925	"	"		200	200		
25	58957	"	"			250		
27	58960	"	"		510			
27	58980	"	"	205				
1	58783	27th & St. Mary's	"			200		
6	58795	"	"			200		
11	58816	"	"	200	200	200		
14	58905	"	"	200				
16	58907	"	"		200	200		
25	58958	"	"	510	510			
27	58979	"	"			205		
29	58972	"	"	210	250			
21	36418	Mona Motor Bulk Sta	Bennington	80	205	130		
3	36378	"	Nickerson, Neb	1020				
17	36386	"	"	720		760		
4	58766	48th & Dodge	Omaha, Neb			400		
1	58781	"	"	200	355			
4	58791	"	"	200				
11	58817	"	"	200	200			
15	58906	"	"	200	200			

Date	Ticket No.	Customer to	Address	Refined Oils: Ethyl	M. M. gas	Comp. gas	Other Mdse.: Avia. gas	Truck
22	58881	48th & Dodge	"	200	200	200	..	..
28	58982	"	"	200	200	205	..	..
29	58988	"	"	....	205	....	..	..
F	58755	20th & Corby	"	200	....	200	..	..
1	58758	"	"	200	400	....	..	..
8	58804	"	"	200	200	200	..	..
14	58932	"	"	200	200	200	..	..
20	58940	"	"	....	400	200	..	..
25	58977	"	"	....	....	200	..	..
29	58986	"	"	200	205	....	..	..
30	58990	38th & Leav	"	200	200	205	..	..
1	45305	Neb. City Service	Neb. City, Neb	....	420	....	..	..
6	45310	"	"	210	210	....	..	..
8	45318	"	"	130	290	....	..	..
15	45403	"	"	....	420	....	..	..
23	45414	"	"	420	....	....	..	..
		From Sioux City to						
1	40827	M. M. Service	So. Soo City	....	200	....	..	..
7	40833	"	"	....	175	....	..	..
18	40845	"	"	125	200	....	..	..
22	40850	"	"	....	128	....	..	..
2	.....	C. A. Dickson	Jackson, Neb	....	150	....	..	..
7	.....	"	"	80	150	....	..	..
13	.....	"	"	80	325	....	..	..
22	.....	"	"	....	285	....	..	..
3	226756	Omaha Bulk to Stockman Serv	32nd & F	100	400	....	..	* 2
3	226214	Dickelman & Krisl	23rd & M	200	200	200	..	*1
3	226215	Cherry Garden Gar	37th & Leav	400	....	....	..	*1
2	226210	Opocensky Gar	5134 So. 24th	....	200	....	..	*1
2	226208	Dickelman & Krisl	23rd & M	200	400	....	..	*1
2	226213	Douglas Gar	20th & Douglas	200	400	....	..	*1
1	226604	On Time Transfer		....	225	....	..	Customer truck
1	226605	" "		....	410	....	..	"
1	226207	Uptown Garage	49th & Farnam	200	....	....	..	..

1	226604	On Time Transfer				225		Customer truck
1	226605	" "				410		" "
1	226207	Uptown Garage	40th & Farnam	200				#1

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1	226203	Dickelman & Krisl	23rd & M	200	200	180		#1
1	226205	Camden Garage	5129 No. 24th		200			#1
1	226606	C. V. Barrows	Murray, Neb		115			Customer truck
1	226204	Phillips Coal & Oil	5302 No. 16th		100			#1
1	226753	McLaughlin Gar	24th & Lake		200			#2
1	226202	Calame & Young	24th & Leav	200	200	200		#1
1	226206	F. W. Shaw	28th & Leav		200			#1
2	226211	Stewart Gar	2813 No. 20th		100			#1
2	226212	F. W. Shaw	38th & Leav	200		200		#1
2	226723	Ricks Battery	4615 So. 24th		200			#3
2	226209	M. M. Service Sta	24th & B, Omaha (30th Kero)					#1
2	226607	West Lawn Gar		55	400			Customer truck
2	226755	M. M. Service Sta	24th & B	200	200	200		#2
3	226216	F. W. Shaw	38th & Leav		200			#1
5	226763	Dickelman & Krisl	23rd & M		400	200		#2
4	226222	Ricks Battery	4615 So. 24	199	174			#1
6	226227	Stockman Serv	32nd & F	200	200	200		#1
6	226226	Dickelman & Krisl	23rd & M	200	200	200		#1
4	226225	McLaughlin Gar	24th & Lake	200	200			#1
4	226224	Calame & Young	24th & Leav	200	200	200		#1
4	226223	M. M. Service Sta	24th & B Omaha	200	400			#1
4	226220	James Vacanti	13th & Pacific	200				#1
4	226219	Phillips Coal & Oil	5102 No. 16th		100			#1
6	226614	West Lawn Garage		200	200	100		30 Customer truck
4	226608	C. V. Barrows	Murray, Neb		110			" "
6	226765	Calame & Young	24th & Leav	200	200			#2
6	226764	James Vacanti	13th & Pacific		200			#2
4	226760	Shaw Super Serv				200		#2
4	226757	Jas. Vacanti	13th & Pacific			200		#2
7	226232	F. W. Shaw	38th & Leav	200				#1
7	226616	C. V. Barrows	Murray, Neb		110			Customer truck
7	226615	West Lawn			400	100		" "
7	226768	Pete Hansen			400			#2
7	226766	Opocensky Gar	5124 So. 24		200			#2
7	226230	Douglas Gar	20th & Douglas	400	200			#1

Date	Ticket No.	Customer to	Address	Refined Oils			Other Mdse.	
				Ethyl	M. M. gas	Comp. gas	Avia. gas	Truck
7	226767	Dickelman & Krisl	23rd & M	200		200		#2
7	226228	Best Garage	28th & Leav		200			#1
8	226236	Dickelman & Krisl	23rd & M	200	400			#1
8	226769	Stockman Service			400	100		#3
8	226235	Uptown Gar	40th & Farnam	100	100			#1
8	226234	Phillips Coal & Oil	5102 No. 16th		100			#1
11	226778	Stockman Serv	32nd & F		200			#3
9	226238	Ricks Battery	4615 So. 24th		200			#1
9	226239	Opocensky Gar	5134 So. 24th		200			#1
9	226237	McLaughlin Gar	24th & Lake		200			#1
10	226241	Dickelman & Krisl	23rd & M	200	200	200		#1
10	226771	Andrew Murphy & Son	1406 Jackson		400			#3
10	226773	Ricks Battery	Brewer					#3
10	226245	Cherry Garden Gar	37th & Leav	200				#1
11	226776	McLaughlin Gar	24th & Lake		200			#3
11	226775	Camden Ave. Gar	24th & Camden	100	200			#3
11	226779	Dickelman & Krisl	23rd & M			200		#3
11	226774	" " "	"	200	400			#3
11	226626	C. V. Barrows	Murray, Neb		55			Customer truck
9	226623	"	"		110			" "
9	226770	Calame & Young	24th & Leav	200	200	200		#3
9	226624	West Lawn Gar		55	200	200		Customer truck
9	226622	Thor Brandeslou					15	" "
10	226246	F. W. Shaw	38th & Leav		200			#1
10	226244	Phillips Coal & Oil	5102 No. 16th		100			#1
10	226242	Stewart Gar	2813 No. 20th		100			#1
10	226243	James Vacanti	13th & Pacific		200	200		#1
10	226772	M. M. Service Sta	24th & B	200	200	200		#3
11	226777	Calame & Young	24th & Leav		200			#3
11	226780	F. W. Shaw	38th & Leav	200		200		#3
11	226625	West Lawn Gar		100	400			Customer truck
13	226153	Douglas Gar	20th & Doug	200	200			#2
14	226155	Dickelman & Krisl	23rd & M					

13	226153	Douglas Gar	20th & Doug	200	200			Customer truck
14	226155	Dickelman & Krisl	23rd & M	200	400			*2
								*1

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13	226249	Stockman Serv	32nd & F		200	200		*2
13	226151	C. W. Hull	24th & Spring		200			*2
13	226781	Dickelman & Krisl	23rd & M		400	200		*1
13	226783	Paxton & Vierling			125			*1
14	226785	Stockman Serv		200	400			*2
14	226786	Peoples Coal Co	916 So. 16th		300			*2
13	226784	Phillips Coal & Oil			100			*1
13	226152	Calame & Young	24th & Leav	200	200	200		*2
13	226628	C. V. Burrows	Murray, Neb		165			Customer truck
14	226629	West Lawn Gar		85	200	200		" "
13	226782	F. W. Shaw			200	200		*1
15	226158	C. W. Hull	24th & Spring		200			*1
15	226159	Ricks Battery	4615 So. 24th	200	200			*1
15	226162	Dickelman & Krisl	23rd & M	200	200	200		*3
16	226163	Best Garage	28th & Leav		200			*2
16	226164	Dickelman & Krisl	23rd & M	400	200			*2
16	226790	Opocensky Gar	24th & Q St	200	200			*1
16	226792	C. W. Hull Co	24th & Spring		200			*1
15	226632	West Lawn Gar			400	130		Customer truck
15	226787	James Vacanti	13th & Pac	200	200	200		*2
15	226788	Calame & Young	24th & Leav		200			*2
16	226789	Phillips Coal & Oil			100			*1
16	226791	M. M. Serv. Station	24th & B		400	200		*1
15	226160	F. W. Shaw	38th & Leav		200			*2
17	266167	Douglas Gar	20th & Doug	400		200		*2
17	266168	On Time Transfer	402 So. 10th	400				*2
17	266170	Cherry Gard. Gar	37th & Leav	400				*2
17	266172	Dickelman & Krisl	23rd & M		200	200		*2
18	266174	Uptown Garage	40th & Farnam	100	100			*2
18	266175	Best Garage	2801 Leav		200			*2
18	266177	"	"	200				*2
18	266178	Ricks Battery			200			*2
20	266180	Dickelman & Krisl	23rd & M	200	200	200		*2
20	266181	Stockman Serv	32nd & F St	200	200	200		*2
20	266185	Dickelman & Krisl	23rd & M		400	200		*2
20	266188	Camden Ave. Gar	5129 No. 24th	100	200			*2
20	266182	Douglas Garage	20th & Doug	400	200			*2

Date	Ticket No.	Customer to	Address	Refined Oils: Ethyl	Refined Oils: M. M. gas	Refined Oils: Comp. gas	Other Mdse.: Avia. gas	Other Mdse.: Truck
18	266251	Dickelman & Krisl	23rd & M	200	200			#1
18	266252	Ricks Battery	4615 So. 24th	55				#1
18	266253	"	"	100				#1
18	266255	McLaughlin Gar	24th & Lake	200	200			#1
20	266258	Pioneer Trial Gar	5351 No. 30th	200	400			#3
20	266260	Opocensky Gar	24th & Q		200			#3
20	266261	Douglas St. Garage	20th & Doug	150	100	153		#3
17	266794	Stockman Serv	32nd & F		400	100		#1
18	266798	Ricks Batte	Brewery	200				#1
18	266799	"	4615 So. 24th		200			#1
17	266169	Calame & Young	24th & Leav			200		#2
20	266902	Stockman Serv	32nd & F		600			#1
20	266904	Cherry Garden Gar	37th & Leay	200				#1
20	266906	Uptown Garage	40th & Farnam	200				#1
17	266171	F. W. Shaw	38th & Leav			200		#2
18	266173	Calame & Young	24th & Leav		400			#2
18	266176	Phillips Coal	5302 No. 16th		100			#2
20	266187	"	"		200			#2
18	266254	F. W. Shaw		200	200			#1
20	266256	Calame & Young	24th & Leav	200		200		
20	266257	M. M. Serv. Sta	24th & B		600			#3
20	226259	Jas. Vacanti	13th & Pac			200		#3
17	226633	West Lawn Gar		200	200	100	30	Customer truck
17	226793	E. E. Stewart Gar	2813 No. 20th	100				#1
18	226796	Jas. Vacanti	13th & Pacific			200		#1
20	226901	"	"		200			
20	226903	M. M. Service Sta	24th & B	200		200		#1
20	226905	Shaw Service Sta	38th & Leav			200		#1
17	226634	C. V. Burrows	Murray, Neb		165			Customer truck
20	226636	West Lawn Gar		130	200	200	"	"
20	226637	C. V. Burrows	Murray, Neb		165		"	"
20	226638	Williard Chambers					"	"
20	226639	West Lawn Gar		100	200	200	30	"

20	226640	"		55	200	200		"	"
22	226190	F. W. Shaw	38th & Leav		200				#2
22	226262	Calame & Young	24th & Leav		200				#1
23	226192	Dickelman & Krisl	23rd & M		400	200			#2
23	226194	F. W. Shaw	38th & Leav	200					#2
24	226908	Stockman Serv	32nd & F			205			#11
[fol. 331]									
24	226907	McLaughlin Gar	24th & Lake		200				#11
24	226811	Calame & Young	24th & Leav	200		200			#11
24	226909	F. W. Shaw	38th & Leav		200				#11
24	277053	C. V. Burrows	Murray, Neb		110				#7
24	226910	Stewart Gar	20th & Corby		100				#11
24	277052	West Lawn Gar			400	55	30		#7
25	226918	Joe Opocensky	24th & M		205				#11
25	226917	Platner Gar	20th & Douglas		400				#11
25	226916	Dickelman & Krisl	23rd & M	200	200	205			#11
25	277101	Uptown Gar	40th & Farnam		100				#7
26	226954	Shaw Super Serv	38th & Leav			200			#12
25	226952	J. Vacanti	13th & Pac		210				#12
25	226913	Calame & Young	24th & Leav		200				#11
25	226953	Phillips Coal	16th & Fort		200				#12
27	226920	Dickelman & Krisl	23rd & M	200	200	205			#11
27	226922	J. Vacanti	13th & Pacific			200			#11
27	226921	Calame & Young	27th & Leav		200	200			#11
27	226915	Stockman Serv	32nd & F		400	205			#11
28	226956	Cherry Garden Garage	37th & Leav	300					#12
28	226924	Dickelman & Krisl	23rd & M	205	400				#11
28	226923	C. W. Hull	24th & Spring		200				#11
28	226955	Shaw Super Serv	38th & Leav	100	210				#12
28	226925	Calame & Young	24th & Leav	200					#11
28	277055	West Lawn Gar		45	400	55		Customer truck	
28	277056	Uptown Garage					5	"	"
29	226926	McLaughlin Gar	24th & Lake		200				#11
29	226927	C. W. Hull & Co	24th & Spring		200				#11
30	226930	Stockman Serv	32nd & F	400	400				#11
30	226929	Dickelman & Krisl	23rd & M	200	200	205			#11
27	277054	C. V. Barrows	Plattsmouth		165			Customer truck	
30	277058	"	Murray, Neb		55			"	"
30	277057	West Lawn Gar		55	200	200		"	"
7	226229	F. W. Shaw	38th & Leav		200				#1
		Grand Total		157,024					

[fol. 332] Mona Motor Oil Company

Council Bluffs, Iowa,
July 19, 1932.

State Treasurer, State of Iowa, Des Moines, Iowa.

Dear Sir: We attach hereto:

(a) Our report as to motor fuel imported into Iowa.
We have endeavored to make this report in conformity with section 5093-A-5 of the Code of Iowa, 1931.

(b) Our check for $12,390.09 to cover the one and two cent tax for June, 1932, on:

1. Motor vehicle fuel imported by our Company into Iowa, and in addition thereto,

we are advised by our attorneys that:

(a) The State of Iowa has no power to levy a tax on our Company on or by reason of motor vehicle fuel imported into Iowa.

(b) The State of Iowa does not levy a tax or license for which our Company is liable.

In order to avoid a revocation of our license as a distributor, however, we are making the report attached hereto, but payment made herewith is not in recognition of our legal liability under the Iowa statutes, but under protest and subject to our legal right to its return, should it be determined that there is no liability on our part.

Very truly yours, Mona Motor Oil Company. Clyde Fuller, Vice President.

[fol. 333] Exhibit 16

Gasoline Refunds Paid by Months Since April 1925

Total for Above Period		$6,562,082.51
Administrative		138,531.72
		6,423,550.79 Refund total
1925		
May (Also April)	$397.53	
June	1,379.91	
July	9,605.01	
August	5,514.87	
September	13,320.11	
October	11,770.76	
November	20,526.31	
December	5,949.76	
Total	68,464.29	Administrative Total — $5,520.18

1926		
January	$18,397.79	
February	13,219.35	
March	8,975.16	
April	8,422.09	
May	10,245.08	
June	14,818.22	
July	21,986.28	
August	15,828.55	
September	24,137.37	
October	24,395.01	
November	19,250.01	
December	6,480.99	
Total	186,456.41	Administrative Total—$10,736.24
1927		
January	27,592.72	
February	8,159.70	
March	15,107.15	
April	11,339.86	
May	5,423.57	
June	42,468.93	
July	18,548.47	
August	33,326.37	
September	61,909.68	
October	63,576.86	
November	48,822.19	
December	51,811.61	
Total	388,187.11	Administrative Total—$14,195.16
1928		
January	40,722.38	
February	27,358.94	
March	37,272.31	
April	42,010.74	
May	58,428.23	
June	65,700.82	
July	42,304.54	
August	75,632.69	
September	68,653.14	
October	81,950.18	
November	67,293.52	
December	58,293.52	
Total	665,871.87	Administrative Total—$23,134.53

[fol. 334] Gasoline Refunds Paid by Month Since April 1925

Total for Above Period ... $6,562,082.51

1929		
January	$46,935.58	
February	28,614.41	
March	32,525.35	
April	38,238.05	
May	73,910.75	
June	108,678.69	
July	82,663.20	
August	95,482.38	
September	92,620.04	
October	100,073.17	
November	86,834.30	
December	83,100.64	
Total	869,676.56	Administrative Total—$29,562.92

1930			
January	$59,310.95		
February	22,556.07		
March	41,980.65		
April	77,340.86		
May	103,827.36		
June	147,298.34		
July	95,651.63		
August	130,176.04		
September	118,715.21		
October	151,574.07		
November	123,314.46		
December	135,677.08		
Total	1,209,392.72	Administrative Total	$32,524.57
1931			
January	96,484.61		
February	53,598.83		
March	76,890.81		
April	105,622.01		
May	152,323.27		
June	158,241.20		
July	126,569.85		
August	164,541.53		
September	149,881.62		
October	138,972.47		
November	112,525.11		
December	115,566.41		
Total	1,451,127.72	Administrative Total	22,858.12
1932			
January	124,424.92		
February	77,058.44		
March	92,932.85		
April	115,461.43		
May	154,426.19		
June	190,293.78		
July	151,508.94		
August	165,297.70		
September	169,681.09		
October	159,337.57		
November	208,025.59		
December	114,757.33		
Total	1,723,205.83		

[fol. 335] Exhibit 17 is already in the record.

(Here follows Exhibit 18, side folio 336)

[fol. 336]

EXHIBIT 18

Proposed Iowa Gasoline Tax Report from Dec. 1st, 1929 to April 30th, 1932

Date	Invoiced gallons on cars reported to Iowa	(Deduct) Tank car shipments from refinery to Iowa	Imported gasoline reported	(Add) Imported Gasoline not Reported to Iowa				Total imported gasoline	From Refinery Gasoline Exported to			
				Refy. receipts in tank cars	Omaha bulk in tank cars	Other bulk Plts. in tank cars	From Nebr. by truck		To bulk plants in tank cars (Nebr.)	To jobbers in tank cars (Nebr.)	To consumers truck and tank cars	To other states
December—1929	265,313	33,055	232,258	8,196	32,603			273,057		12,287		
January—1930	330,905	37,321	293,584		49,278			342,862		5,964	54	
February—1930	186,255	15,152	171,103	12,890	16,153			200,146				8,297
Supplement	8,160											
March—1930	372,230		380,390		48,670	8,149		437,209				
April—1930	357,119	40,688	316,431		31,956	7,989		356,376				
May—1930	307,802	99,399	208,403	8,003	39,955			256,361	8,134	24,294	28,732	16,029
June—1930	328,926	80,392	248,534		47,747			296,281	16,085	8,093	18,039	
July—1930	437,559	88,118	349,441		39,527	7,906		396,874	40,044	16,150	12,498	8,067
August—1930	492,914	88,052	404,862		39,593			444,455	15,975	8,030	22,047	
September—1930	438,099	72,308	365,791		39,826	8,021		413,638	24,043			
October—1930	369,049	56,909	312,140		48,094		970	361,204	24,277		6,944	8,109
November—1930	492,396	139,302	353,094		48,511		1,630	403,235	24,660		6,224	
December—1930	334,582	99,386	235,196		48,743			283,939	16,519			
January—1931	285,515	138,705	146,810		48,904			195,714	76,243		8,189	
February—1931	361,357	106,901	254,456		48,680		600	303,736	39,085	8,197	6,536	
March—1931	310,040	139,477	170,563		48,717		1,640	220,920	65,633			
April—1931	442,758	240,310	202,448		40,394		1,520	244,362	69,008		6,303	
May—1931	379,449	48,717	330,732	23,930	32,223		1,160	388,045	8,063			
June—1931	343,883	32,029	311,854	31,862	47,853		1,520	393,089	15,970		6,524	
July—1931	565,404	64,098	501,306	173,165	55,433	8,064	2,340	740,308		8,004		
August—1931	566,638	88,022	478,616		47,596	7,919		534,131		8,025	6,548	
September—1931	399,325	56,221	343,104		63,453			406,557	8,041		5,532	
October—1931	416,051	32,383	383,668	121,206	55,888			560,762			7,999	
November—1931	391,840		391,840	129,783	48,729			570,352				
December—1931	333,182		333,182	89,721	65,350		185	488,438			6,340	
January—1932	384,668		384,668	81,443	49,103			515,214			6,805	
February—1932	227,891		227,891	8,233	49,106			285,230			7,228	
March—1932	380,121	16,322	363,799		49,027		1,650	414,476			12,411	
April—1932	347,343	8,019	339,324	16,157	32,463			387,944			6,769	
Totals	10,856,774	1,821,286	9,035,488	704,589	1,313,575	48,048	13,215	11,114,915	451,780	99,044	181,722	40,502

Total Refinery and Omaha Bulk Plant Imports: 2,018,164.

Total Exports from Refinery and Omaha Bulk Plant.

EXHIBIT 1

Proposed Iowa Gasoline Tax Report from Dec. 1st, 1929 to April 30th, 1932

(Add) Imported Gasoline not Reported to Iowa					From Refinery Gasoline Exported to Nebraska & Other States											
fy. ipts ank rs	Omaha bulk in tank cars	Other bulk Plts. in tank cars	From Nebr. by truck	Total imported gasoline	To bulk plants in tank cars (Nebr.)	To jobbers in tank cars (Nebr.)	To consumers truck and tank cars	To other states	To Nebr. from Omaha blk.	Truck transfers (ex. Omaha blk.)	Total exported gasoline	Gross gal. to be reported to Iowa	Deduct 3% allowance	Net gallons to be reported to Iowa	Net gallons reported (per tax reports)	Over under reported
;,196	32,603	.....	.....	273,057	.....	12,287	.....	.....	77,787	9,300	99,374	173,683	5,210	168,473	247,251	78,778
.....	49,278	.....	.....	342,862	.....	5,964	54	.....	93,538	6,732	106,288	236,574	7,097	229,477	315,522	86,045
,890	16,153	.....	.....	200,146	.....	.....	.....	8,297	96,693	3,988	108,978	91,168	2,735	88,433	179,301	90,868
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	48,670	8,149	.....	437,209	.....	.....	.....	.....	103,055	4,433	107,488	329,721	9,892	319,829	365,010	45,181
.....	31,956	7,989	.....	356,376	.....	.....	.....	.....	120,768	6,016	126,784	229,592	6,888	222,704	342,749	120,036
,003	39,955	.....	.....	256,361	8,134	24,294	28,732	16,029	112,083	5,996	195,268	61,093	1,833	59,260	295,033	235,773
.....	47,747	.....	.....	296,281	16,085	8,093	18,039	.....	109,278	6,710	158,205	138,076	4,142	133,934	315,995	182,061
.....	39,527	7,906	.....	396,874	40,044	16,150	12,498	8,067	112,758	13,781	203,298	193,576	5,807	187,769	423,711	235,942
.....	39,593	.....	.....	444,455	15,975	8,030	22,047	.....	118,496	19,035	183,583	260,872	7,826	253,046	477,176	224,130
.....	39,826	8,021	.....	413,638	24,043	.....	.....	.....	116,155	23,711	163,909	249,729	7,492	242,237	424,276	182,039
.....	48,094	.....	970	361,204	24,277	.....	6,944	8,109	121,124	22,844	183,298	177,906	5,337	172,569	353,374	180,805
.....	48,511	.....	1,630	403,235	24,660	.....	6,224	.....	98,533	13,634	143,051	260,184	7,805	252,379	472,649	220,270
.....	48,743	.....	.....	283,939	16,519	.....	.....	.....	102,554	18,945	138,018	145,921	4,378	141,543	316,694	175,151
.....	48,904	.....	.....	195,714	76,243	.....	8,189	.....	111,528	17,918	213,878	18,164	.....	18,164	264,954	283,118
.....	48,680	.....	600	303,736	39,085	8,197	6,536	.....	100,579	21,673	176,070	127,666	3,830	123,836	342,626	218,790
.....	48,717	.....	1,640	220,920	65,633	.....	.....	.....	106,503	19,398	191,534	29,386	882	28,504	293,276	264,772
.....	40,394	.....	1,520	244,362	69,008	.....	6,303	.....	142,225	24,674	242,210	2,152	65	2,087	429,834	427,747
,930	32,223	.....	1,160	388,045	8,063	.....	.....	.....	145,449	22,621	176,133	211,912	6,357	205,555	289,983	84,428
862	47,853	.....	1,520	393,089	15,976	.....	6,524	.....	185,999	22,515	231,008	162,081	4,862	157,219	326,692	169,473
165	55,433	8,064	2,340	740,308	.....	8,004	.....	.....	214,941	27,673	250,618	489,690	14,691	474,999	545,199	70,200
.....	47,596	7,919	.....	534,131	.....	8,025	6,548	.....	194,305	28,093	236,971	297,160	8,915	288,245	540,597	252,352
.....	63,453	.....	.....	406,557	8,041	.....	5,532	.....	189,449	18,248	221,270	185,287	5,559	179,728	379,294	199,566
206	55,888	.....	.....	560,762	.....	.....	7,999	.....	195,308	24,929	228,236	332,526	9,976	322,550	393,067	70,517
783	48,729	.....	.....	570,352	.....	.....	.....	.....	172,769	21,208	193,977	376,375	11,291	365,084	373,645	8,561
721	65,350	.....	185	488,438	.....	.....	6,340	.....	158,844	14,378	179,562	308,876	9,266	299,610	312,880	13,270
443	49,103	.....	.....	515,214	.....	.....	6,805	.....	129,195	9,349	145,349	369,865	11,096	358,769	361,633	2,864
233	49,106	.....	.....	285,230	.....	.....	7,228	.....	119,635	9,379	136,242	148,988	4,470	144,518	226,893	82,375
.....	49,027	.....	1,650	414,476	.....	.....	12,411	.....	153,986	9,922	176,319	238,157	7,145	231,012	370,516	139,504
157	32,463	.....	.....	387,944	.....	.....	6,769	.....	137,145	7,792	151,706	236,238	7,087	229,151	362,025	132,874
589	1,313,575	48,048	13,215	11,114,915	451,780	99,044	181,722	40,502	3,840,682	454,895	5,068,625	6,045,290	181,934	5,864,356	10,341,846	4,477,490

Total Exports from Refinery and Omaha Bulk Plant 4,613,730

[fol. 337] Exhibit 19 consists of the gasoline tax reports made by the Mona Motor Oil Company to the Treasurer of the State of Iowa for the months of February, March and April, 1927. They were all on the same form and show substantially the same information. The report for the month of February, 1927, is as follows:

[fol. 338] EXHIBIT 19

Report of Gasoline Imported and Sold—Filed by MonaMotor Oil Company for the Month Ending February 28, 1927

1. Sales by dealer to himself			1700 gals.
2. Sales in tank cars to other resellers or consumers			16296 "
2. All other sales to other resellers or consumers			66900 "
4. Total gallons sold (sum of 1, 2 and 3)			84896 gals.
Deductions			
5. Sales to alleged resellers (classified as distributors) on which the purchaser elects to pay the license fee (Item form 3)	16296 gals.		
6. (a) Sales for use outside of state (Item form 3)	12495 "		
(b) Purchased from another distributor on which license fee was paid (Item form 3)			
7. Sold to U. S. Government (Item. form 3)			
8. Total gallons sold on which fees are not being paid sum of 5, 6 and 7			28791 gals.
9. Gallonage on which license fee is to be paid (4 less 8)			56105 "
10. License fees on 56105 gallons at 2¢ per gallon			$1,122.10
11. Number of gallons remaining on hand (from last report)			19808 gals.
12. Number of gallons imported into the state of Iowa by me (or us) during the calendar month			79533 "
13. Total (Items 11 and 12)			99342 "
Deductions			
14. Item No. 8 above	28791 gals.		
15. Item No. 9 above	56105 "		
16. Other deductions (itemize (a) and state fully for what (b) each deduction is made) (c)			
17. Total deductions			84896 gals.
18. Number of gallons remaining on hand			14446 "

[fol. 339]

Statement of Sales of Gasoline by MonaMotor Oil Company on which the Iowa State License Fees Have Not Been Collected, attached to and Forming a Part of the Report Filed by MonaMotor Oil Company for the month Ending February 28, 1927

Date of delivery	Ticket or Invoice No.	Name of purchaser	Address	Gals.
2-11-27	PARX 1105	Indian Oil Co.	Des Moines	8474
2-18-27	" 348	Carrol Gas Co.	Carrol	8122
2-12-27	" 385	MonaMotor Oil Co.	Co. Bluffs	8217
2-12-27	" 280	" " "	"	8119
2-17-27	" 370	" " "	"	8215
2-17-27	MMKX 104	" " "	"	6099
2-24-27	PARX 271	" " "	"	8098
2-24-27	" 262	" " "	"	8096
2-24-27	" 948	" " "	"	8179
2-24-27	VENX 549	" " "	"	8214
				79533

[fol. 340] State of Nebraska

Department of Agriculture, Lincoln

Division of Gasoline Tax Collection

Report of Sales of Gasoline for Month of February, 1927 by MonaMotor Oil Company, Council Bluffs, Iowa, 3-17-27

Date	Point	Tank line	Gallons sold	Total tax	Balance on hand
..	Jamieson Oil Company		7600	.....	.....
..	West L Garage		2200	.....	.....
..	Killy Motor Company		2695	.....	.....
			12495		
		@ 2¢ Tax		$249.90	
	Inspection fee on 12495 gallons 250 barrels @ 3¢				$7.50

Your report on total gallons of gasoline sold and used must reach the Department of Agriculture by the 15th of each month for the preceding calendar month with remittance of tax @ 2¢ per gallon.

STATE OF IOWA,

Pottawattamie County, ss:

I, the undersigned, —— ——, being duly sworn affirm that the foregoing is a true return of the amount of tax due for the month of February, 1927.

(Firm:) MonaMotor Oil Company, by E. L. Walters, Traffic Manager.

Subscribed in my presence and sworn to before me this 17th day of March, 1927. —— ——, Notary Public.

All remittances must be made by Money-Order, Bank Draft, or Certified Check payable to the order of the State Department of Agriculture.

All gasoline used for tank wagons or personally owned cars must be reported as sold, and a tax remitted for same.

[fol. 341] Cars Shipped Into State During February, 1927 on Which Consignee Pays Inspection Tax

Date	Point	Tank line	Car No.	Name	Gallons
2/ 2	Omaha	PARX	259	Mulcahy Oil Company	8113
2/12	"	"	221	" " "	8246
2/19	"	"	936	" " "	8201
2/ 2	Lincoln	"	220	Checkerboard Fil-ing Station	8303
2/ 5	"	"	247	Checkerboard Fil-ing Station	8206
2/16	"	"	1148	Checkerboard Fil-ing Station	8089
2/ 3	"	EDRX	257	Ben R. Hearson	8106
2/ 8	Fremont	PARX	479	Wagner Oil Company	8064
2/12	Omaha	GATX	14793	Belt Line Oil Co	8123
2/17	Mason City	PARX	909	M. F. Roberson	8166
2/19	Greenwood	MMKT	103	Greenwood Oil Co	6101
2/24	Omaha	VENX	537	Welch Oil Co	8087
2/25	Friend	TIDX	1241	Rousch Bros.	8109
2/26	Lincoln	PARX	973	E. L. Mills	8169
2/28	Loup City	"	858	Sherman County	8172

[fol. 342] March 26, 1927.

MonaMotor Oil Company, Council Bluffs, Iowa.

GENTLEMEN: We have received your report of importations and sales of gasoline in the State of Iowa during the calendar month of February.

In checking your report we note that item 11 thereof shows an excess of 100 gallons over item 18 of your January report. Item 11 of your February report should read 19,808, item 13 should read 99,342 and item 18 should read 14,446 gallons. Kindly make this correction upon your retained copy of the report, in order that further errors may be avoided when filing subsequent reports.

Thanking you for your co-operation, we are

Yours very truly, R. E. Johnson, Treasurer of State,
by —— ——, Supt. Gasoline Dept.

NJW.

[fol. 343] April 1, 1927.

MonaMotor Oil Company, Council Bluffs, Iowa.

GENTLEMEN: In checking your report of importations and sales of gasoline in the State of Iowa during the calendar month of February, we note that under item 5 thereof you show 16,296 gallons on which the purchaser elects to pay the license fee.

Inasmuch as you failed to itemize this gallonage on Form 3 accompanying your report, we are enclosing herewith additional copies of Form 3 and request that you complete same, showing to whom these sales were made.

Thanking you for your co-operation, we are,

Yours very truly, R. E. Johnson, Treasurer of State,
by —— ——, Supt. Gasoline Dept.

NJW.

[fol. 344] Council Bluffs, Iowa,
April 4, 1927.

R. M. Williams, Supt. Gasoline Dept., State Treasurer's Office, Des Moines, Iowa.

DEAR SIR: Replying to your favor of the 1st. Beg to advise that our records indicate that we forwarded to you a statement of sales of gasoline and that Form No. 3 was

attached thereto. However, we are enclosing copy herewith. The first two items on this report shows the 16,296 gallons referred to.

Yours very truly, MonaMotor Oil Company, E. L. Walters, Traffic Manager.

ELW:F.

[fol. 345]

Statement of Sales of Gasoline by MonaMotor Oil Company on Which the Iowa State License Fees Have Not Been Collected, Attached to and Forming a Part of the Report Filed by MonaMotor Oil Company for the Month Ending February 28, 1927. (Items required to be Reported on This Form Should be Grouped Under Item Number Shown on Form No. 2)

Date of delivery	Ticket or invoice No.	Name of purchaser	Address	Gallons
2 11 27	PAKX 1105	Indian Oil Co.	Des Moines	8174
2 18 27	" 348	Carrol Gas Co.	Carrol	8122
2 12 27	" 385	MonaMotor Oil Co.	Council Bluffs	8217
2 12 27	" 280	" " "	" "	8215
2 17 27	" 370	" " "	" "	8119
2 17 27	MMKX 104	" " "	" "	6099
2 24 27	PARX 171	" " "	" "	8098
2 24 27	" 262	" " "	" "	8096
2 23 27	" 948	" " "	" "	8179
2 24 27	VENX 549	" " "	" "	8214
				79533

[fol. 346] In United States District Court

Stipulation and Præcipe for Transcript—Filed October 11, 1933

To the Clerk of said Court:

It is stipulated by and between the parties hereto and their attorneys, Geo. S. Wright, Addison G. Kistle and Paul E. Roadifer, representing the plaintiffs, and Edward I. O'Connor, Attorney General of the State of Iowa, and L. W. Powers, Assistant Attorney General, representing defendants:

That you are to prepare a transcript for the United States Supreme Court in the above entitled action, and include in said transcript the following:

1. Petition in Equity with date of filing. Omit therefrom Chapter 252-A1, and Exhibits "D" and "E".
2. Stay Orders with date of filing.

3. Motion to Dismiss with date of filing.

4. Order Overruling Motion to Dismiss with date of filing.

5. Orders Continuing Stay until hearing on temporary injunction and date of filing.

[fol. 347] 6. Answer to petition with date of filing.

7. Amendment to petition with date of filing.

8. Amendments to answer with date of filing.

9. Answer of additional defendants filed February 10, 1933.

10. Statement of the evidence together with stipulation of facts and stipulation with respect to statement of evidence and exhibits and order approving statement of the evidence.

11. Opinion with findings of fact, conclusions of law and order with date of filing.

12. Petition for Appeal with date of filing.

13. Assignment of Errors with date of filing.

14. Order allowing appeal with date of filing.

15. Citation and acceptance of service with date of filing.

16. Acceptance of service of petition for appeal and order allowing appeal.

17. Stipulation with respect to bond and date of filing.

18. Bond and approval thereof with date of filing.

19. Statement of jurisdiction in conformity with Rule XII, with acceptance of service thereon and date of filing.

20. Application for order extending time within which to file record in the Supreme Court of the United States with order thereon and date of filing.

21. Second application for order extending time within which to file record in the Supreme Court of the United States with order thereon and date of filing.

22. Stipulation and præcipe for transcript.

It is further stipulated and agreed that the above and foregoing, together with the statement of the evidence and the exhibits filed in the office of the Clerk of said court, together with this præcipe, shall constitute the record in said cause, and the Clerk of this Court is authorized and directed

[fol. 348] to certify the same to the Clerk of the Supreme Court of the United States as the record herein.

Dated this 7th day of October, 1933.

(Sgd.) Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Attorneys for Plaintiff. Edward L. O'Connor, L. W. Powers, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

ORDER APPROVING STIPULATION AND PRÆCIPE FOR TRANSCRIPT—Filed October 11, 1933

Upon the presentation of the above and foregoing stipulation and præcipe for transcript in the above entitled cause, signed by the attorneys for the above respective parties, it is hereby ordered by the court that the same be and constitute the record in said cause, and the Clerk of this court is authorized and directed to certify the same to the Clerk of the Supreme Court of the United States as the record herein.

Dated this 11th day of October, 1933.

(Sgd.) Chas. A. Dewey, Judge.

[fol. 349] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 350 & 350a] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Filed July 22, 1933

Upon presentation of the application of the Mona Motor Oil Company for extension of time within which to file record in the Supreme Court of the United States, and pursuant to the stipulation of the parties with respect thereto, it is hereby

Ordered by the Court that the time within which to file said record in the Supreme Court of the United States be and hereby is extended to September 27, 1933, and that the filing of the transcript and record in said Supreme Court of

the United States within said time shall have the same force and effect as if the same were filed within forty (40) days from the issuance of the citation herein.

Dated this 20th day of July, 1933.

(Sgd.) Chas. A. Dewey, Judge.

[fols. 350b-351a] [File endorsement omitted.]

[fols. 351b & c] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Filed Sept. 25, 1933

Upon the presentation of the application of the Mona-Motor Oil Company for extension of time within which to file record in the Supreme Court of the United States, and pursuant to the stipulation of the parties with respect thereto, it is hereby

Ordered by the Court that the time in which to file said record in the Supreme Court of the United States be and hereby is extended to October 27th, 1933, and that the filing of the transcript and record in said Supreme Court of the United States within said time shall have the same force and effect as if the same were filed within forty (40) days from the issuance of the citation herein.

Dated this 23rd day of September, 1933.

(Sgd.) Chas. A. Dewey, Judge.

[fol. 351d] [File endorsement omitted.]

[fol. 352] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANT INTENDS TO RELY AND PARTS OF THE RECORD NECESSARY FOR CONSIDERATION THEREOF—Filed Oct. 30, 1933

Comes now the MonaMotor Oil Company, Appellant, and as provided by the rules of this Court, Chapter 13, Subdivision 9 thereof, files this, its definite statement of the points on which Appellant intends to rely and designates the parts of the record necessary for the consideration thereof.

Point I

That the Court erred in refusing and denying the relief sought by the plaintiff, and in dismissing the petition of the plaintiff for the following reasons, to-wit:

(a) The defendants sought and were seeking to enforce a 3-cent tax on gasoline (motor vehicle fuel) based upon a 2-cent tax contained in Chapter 251-A1 of the Code of Iowa, 1927, which applied to part of the period, and Chapter 251-A1 of the Code of Iowa, 1931; and a 1-cent per gallon tax upon gasoline as provided for by Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and on motor vehicle fuel as provided by Section 4755-b38 of the Code of Iowa, 1931, as if the same were a 3-cent tax on the same thing, when said statutes were unconstitutional and [fol. 353] void because in their relation to the business of the plaintiff, MonaMotor Oil Company, they were so uncertain and meaningless that the enforcement of the statute amounts to the taking of private property of the MonaMotor Oil Company without the due process of law, contrary to Section I of the Fourteenth Amendment to the Constitution of the United States, and denies to the complainant, the equal protection of the law.

(b) That Chapter 251-A1 of the Code of Iowa, 1927, and as amended and appearing in the Code of Iowa, 1931, it is in contravention of the Constitution of the United States as construed by the trial court, and in fact as authorizing the collection of a 2-cent tax on gasoline (motor vehicle fuel), as a 2-cent tax per gallon on gasoline (motor vehicle fuel), imported into the State of Iowa by the MonaMotor Oil Company, and therefore is a tax and burden upon interstate commerce and contrary to the commerce clause of the Constitution of the United States.

(c) That Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1931, is in contravention of the Constitution of the United States as construed by the trial court, and in fact, as authorizing the collection of a 1-cent tax on gasoline (motor vehicle fuel), as a 1-cent tax per gallon on gasoline (motor vehicle fuel), imported into the State of Iowa by the MonaMotor Oil Company, and therefore is a tax and burden upon interstate commerce and con-

trary to the commerce clause of the Constitution of the United States.

(d) That Chapter 251-A1 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, insofar as it may warrant when properly construed, the collection of a license fee of 2-cents per gallon on gasoline (motor vehicle fuel), imported into the State of Iowa for any month as a payment of the tax or license fee, not as a debt of the importer, but as a tax or license fee which may or may not subsequently become due from the user or consumer of gasoline (motor vehicle fuel), is unconstitutional and void and [fol. 354] contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company the equal protection of the law and amounts to the taking of private property of the MonaMotor Oil Company without due process of law, contrary to Section I of the Fourteenth Amendment to the Constitution of the United States, in that it would compel the MonaMotor Oil Company to pay the debt of another in the first instance, without any statutory or legal right to collect the same from the user or consumer.

(e) That Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, and Chapter 251-A1 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, which may be part of the provisions relating to a 1-cent tax, insofar as they may warrant when properly construed, the collection of a license fee of 1-cent per gallon on gasoline (motor vehicle fuel), imported into the State of Iowa for any month as the payment of the tax or license fee, not as a debt of the importer, but as a tax or license fee which may or may not subsequently become due from the user or consumer of gasoline (motor vehicle fuel), is unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company the equal protection of the law and amounts to the taking of the private property of the MonaMotor Oil Company without due process of law contrary to Section I of the Fourteenth Amendment to the Constitution of the United States, in that it would compel the MonaMotor Oil Company to pay the debt of another in the first instance, without any statutory or legal right to collect the same from the user or consumer.

(f) That the record shows conclusively that the Mona-Motor Oil Company was engaged in interstate business of selling gasoline (motor vehicle fuel), in original containers, and that a large part of its business was such interstate business and insofar as Chapter 251-A1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b5 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b38 of the Code [fol. 355] of Iowa, 1927, and as amended by the Code of Iowa, 1931, authorizes and compels the MonaMotor Oil Company to make reports of gasoline (motor vehicle fuel), imported by it and to pay 3-cents per gallon license fee or tax thereon, without statutory right of reimbursement from the purchaser of such gasoline (motor vehicle fuel), in original containers such as tank cars, etc., the said acts are unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company the equal protection of the law, contrary to the Constitution of the United States, and amounts to the taking of private property of the Mona-Motor Oil Company without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(g) In view of the fact that Chapter 251-A1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b5 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and each of them, affords no method of separation of the gasoline (motor vehicle fuel), imported in tank cars and original containers, as a part of the interstate business of the MonaMotor Oil Company in its sale in original containers to distributors, which is a substantial part of the business of the MonaMotor Oil Company, from the business of the MonaMotor Oil Company as a retailer of gasoline (motor vehicle fuel), to enforce the statutes against the MonaMotor Oil Company, if either imposes a liability on the MonaMotor Oil Company for the payment of the tax measured by the aggregate of gasoline (motor vehicle fuel) imported, and computing a tax of 3-cents per gallon thereon, renders said acts and each of them in their enforcement and operation, unconstitutional and void, and contrary to the commerce clause of the Consti-

tution of the United States as a direct burden on interstate commerce, and denies to the MonaMotor Oil Company the equal protection of law in the conduct of its interstate business, and takes the private property of the MonaMotor Oil Company without due process of law, contrary to Section I [fol. 356] of the Fourteenth Amendment to the Constitution of the United States.

(h) That Chapter 251-A1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and said chapter as a part of Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, in so far as it authorizes the Treasurer of the State of Iowa, without notice, as the record shows here was done, to cancel the license and authority of the MonaMotor Oil Company to engage in its interstate business of selling gasoline (motor vehicle fuel), in original containers, such as tank cars, etc., being a substantial part of its business, because of the alleged non-payment of tax or license fees, based upon and measured solely by imported gasoline (motor vehicle fuel), without giving it any opportunity to be heard as to its liability therefor, or the amount thereof, amounts to and results in the destruction of its business and the taking of its property without due process of law, and contrary to Section I of the Fourteenth Amendment to the Constitution of the United States, denies to the MonaMotor Oil Company the equal protection of law.

For consideration of Point I and each subdivision thereof, it is necessary that the Court have as a part of the record:

The Petition in Equity and Amendments.

The Answer and Amendments.

The Opinion with Finding of Fact and Conclusions.

Statement of the Evidence together with all exhibits set out therein.

Statement of Jurisdiction filed in conformity with Rule XII.

The Statutes of the State of Iowa referred to.

Stipulation and Præcipe for Transcript.

Point II

In view of the fact that Chapter 251-A1 of the laws of Iowa, Code of 1927 and 1931, in its relation to the inter-

state and intrastate business of the MonaMotor Oil Company, and its enforcement by the officials of the State of Iowa, levies or undertakes to levy a 2-cent tax per gallon on imported gasoline or imported motor vehicle fuel, it is a tax on such imported property and as such on imports [fol. 357] and by reason thereof the Court should have declared such statutes in contravention of Sections 8 and 10, Art. I, of the Constitution of the United States, and void, and erred in not so construing such acts and in not holding them unconstitutional.

The same record referred to for consideration under Point I, is to — deemed the record necessary for consideration of Point II, as though fully set out herein.

Point III

In view of the fact that the sole and exclusive measure of the amount of tax sought against the MonaMotor Oil Company as a distributor, under Chapter 251-A1 of the laws of Iowa, Code of Iowa 1927 and 1931, is the amount of gasoline (motor vehicle fuel) imported into the State of Iowa, the tax is against imported gasoline or motor vehicle fuel as such, and is a direct burden on interstate commerce contrary to the commerce clause, Sections 8 and 10 of the Constitution of the United States, and void, and the Court erred in not so holding, and in not granting to complainant the relief sought, by the enjoining enforcement of the acts against it.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point III, as though fully set out herein.

Point IV

That the record shows other firms and corporations were mixing, blending and compounding gasoline and motor vehicle fuel in the State of Iowa, and that the Court erred by reason of such facts in not holding that Chapter 251-A1 of the Code of Iowa, 1927 and 1931, and Sections 4755-b5 and 4755-b38 of the Code of Iowa, 1927 and 1931, are unconstitutional and void in that the proper interpretation thereof gasoline and motor vehicle fuel refined or compounded and blended in Iowa, and not imported therein, was not subject to the tax or license fee, and to tax im-

ported gasoline or motor vehicle fuel, and exempt from the tax gasoline or motor vehicle fuel refined or blended in Iowa, constitutes an illegal discrimination contrary to the commerce clause of the Constitution of the United States, [fol. 358] Sections 8 and 10 of Art. I, and denies to the plaintiff the equal protection of the law and takes property of the plaintiff without due process of law, all contrary to Section I of the Fourteenth Amendment to the Constitution of the United States.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point IV, as though fully set out herein.

Point V

By Section 5093-a1 of Chapter 251-A1, Code of Iowa, 1931:

"A license fee of two cents per gallon or fraction of a gallon is hereby imposed on *all* gasoline (motor vehicle fuel) used or otherwise disposed of in the state for any purpose whatsoever. Any person using gasoline (motor vehicle fuel) within the state shall be liable for the fee herein provided for unless the same shall have been previously paid,"

is created a liability on the "user" of gasoline (motor vehicle fuel), and to enforce such tax on the distributor who imports gasoline, because imported is to make complainant pay another's debt and constitutes the taking of private property without due process of law and renders the whole act contrary to Section I of the Fourteenth Amendment to the Constitution of the United States, and the Court erred in not so holding and granting to the complainant the relief sought.

The same record referred to for consideration under Point I is to be deemed the record necessary for consideration of Point V, as though fully set out herein.

Point VI

That the Court erred in dismissing the petition of the plaintiff and in denying the relief sought, because the statutes of the State of Iowa referred to hereinabove, providing for the 1-cent and the 2-cent tax on gasoline (motor vehicle fuel), were unconstitutional and void for all of the reasons set out hereinabove.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point II, as though fully set out herein.

[fol. 359] — VII

That the Court erred in denying to the MonaMotor Oil Company the relief sought and dismissing its petition, and in holding that said petition and the facts supporting the same was wanting in equity, and the Court should have sustained the petition and granted the plaintiff the relief sought, for all of the grounds hereinabove stated.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point II, as though fully set out herein.

— VIII

That the Court erred in its interpretation of Chapter 251-A1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, in holding that while the tax was levied on gasoline (motor vehicle fuel), used and disposed of in the State of Iowa, it was a tax against the use of such gasoline by the consumer, and that the payment of such license fee, or tax, must be made by the distributor or importer, the MonaMotor Oil Company, plaintiff; whereas, the Court should have construed the statute as levying a tax on the user of such gasoline (motor vehicle fuel), for which the distributor, MonaMotor Oil Company, was not liable, and particularly in view of the fact that the provisions of Section 5903-A5 of said acts, which originally specifically provided for liability of distributor, were repealed from said statute prior to any of the acts complained of herein.

The Court erred in dismissing the petition of the plaintiff and in denying the relief sought, based upon such erroneous interpretation of the statute.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point VIII, as though fully set out herein.

[fol. 360] Point IX

The Court erred in its interpretation of Chapter 251-A1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, in holding that the ultimate consumer pays the

tax or license fee even though paid in the first instance by the distributor of gasoline (motor vehicle fuel) imported into the State of Iowa, even though there is no provision in the law whereby the distributor, in this case the Mona-Motor Oil Company, has any right of recovery in law from the consumer of such gasoline (motor vehicle fuel).

The Court erred in dismissing plaintiff's petition and in denying the relief sought, based upon such erroneous interpretation of the statutes of Iowa.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point IX, as though fully set out herein.

Point X

The Court erred in its interpretation of Chapter 251-A1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, as allowing a tax upon gasoline (motor vehicle fuel), in the hands of the user or consumer, for which the distributor is liable under the statutes of Iowa.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point X, as though fully set out herein.

Point XI

The Court erred in its interpretation of Chapter 251-A1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, as giving to the state the right to exact the payment of the license fee or tax, from the distributor of gasoline (motor vehicle fuel), imported into the state as the prerequisite to its right to distribute and sell gasoline in interstate commerce, and in holding that the state had the right to compel the distributor, upon the pains and penalties of the act, to first pay the tax of another as a matter of regulation in its interstate and intrastate business [fol. 361] in such products. And that the Court erred in dismissing the petition of the plaintiff and denying the relief to it, based upon such erroneous construction or interpretation of such alleged right of the state.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point XI, as though fully set out herein.

Point XII

The Court erred in its interpretation of Section 4755-b5 and Section 4755-b38, Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, and particularly, in interpreting the tax or license fee as levied by said acts on gasoline and motor vehicle fuel, the same as contained in Chapter 251-A1, when said acts specifically levy a tax on gasoline and motor vehicle fuel "imported and used in Iowa", and by reason thereof, erred in refusing the plaintiff the relief sought, and in denying plaintiff's petition on its merits.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point XII, as though fully set out herein.

Point XIII

The Court erred in holding that Sections 4755-b5 and 4755-b38 were properly enacted, and in holding that they were not unconstitutional as violating Section 29 of Article 3, and Section 7 of Article 7, of the Constitution of the State of Iowa, and in denying to the plaintiff the relief sought, and in dismissing its petition by reason of such holding.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point XIII, as though fully set out herein.

Point XIV

The Court erred in holding and finding that plaintiff has in fact collected the tax or license fee, from users of gasoline (motor vehicle fuel), under the statutes of Iowa, for the reason:

[fol. 362] 1. There is no provision of the statutes of Iowa under which such collection can be made, or under which recovery can be had.

2. That there is no competent evidence in the record in this case from which the Court could find, as a matter of fact, that plaintiff had collected any such tax or license fee from the user or consumer of motor vehicle fuel.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point XIV.

Point XV

That the Court erred in denying to the plaintiff the relief sought and dismissing its petition and not holding that the statutes of Iowa were unconstitutional on the ground of estoppel, for the reason that there are no facts upon which estoppel could be based in the record. That the Court erred in holding and finding as a fact that plaintiff received any benefits whatsoever under the statutes of Iowa. There is no competent evidence in the record from which the Court could find, as a matter of fact, that plaintiff collected any tax from the consumer or user or retailer of gasoline (motor vehicle fuel).

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point XV.

Point XVI

The Court erred in not holding the statutes of Iowa above named, both as to the 1-cent tax or license fee, and the 2-cent tax or license fee, unconstitutional and void, and contrary to the Constitution of Iowa, in that the statute levies a tax on all gasoline irrespective of the manner of its use, and when the tax is paid by the distributor, or paid by the plaintiff, Mona Motor Oil Company, that part of the act which refunds the tax or license fee on gasoline used for purposes other than the propulsion of motor vehicles on the highway, in that it taxes one class of persons, to-wit, distributors of gasoline (motor vehicle fuel), for the benefit [fol. 363] of another class of persons, to-wit, the users of gasoline (motor vehicle fuel), for uses other than the propulsion of motor vehicles on the highway; and that such exemption is so inextricably a part of the whole act, that the whole act is unconstitutional and void for said reason, and the Court erred in not decreeing that said statutes were unconstitutional for said reasons, and in denying to the plaintiff the relief sought, and in dismissing its petition.

The same record referred to for consideration under Point I, is to be deemed the record necessary for consideration of Point XVI.

Point XVII

That upon the record as a whole, the Court erred in dismissing the petition of the plaintiff on its merits, and denying to the plaintiff the relief sought, and in denying a per-

manent injunction against the state officers, injoining them from enforcing said statutes of Iowa as against this plaintiff.

That as applied to each of the points above set out, each item of the record as set out in the præcipe for transcript and the stipulation with reference thereto, is necessary for proper consideration of the points relied upon, it being essential to determine the issues from the petition and amendments, and from the answer and amendments, to determine the facts relative to the several points requires that the record show all stipulated facts, all exhibits including the statutes referred to, the transcript of the evidence as set out in the præcipe, and the stipulation with reference thereto; the decree of the lower court and all the record stipulated upon and certified to this Court.

MonaMotor Oil Company. Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Attorneys for Appellant.

[fol. 364] STIPULATION

Now on this 26th day of October, 1933, the above and foregoing Definite Statement of Points on which Appellant intends to rely, and statement of parts of the record which it deems necessary for consideration thereof, is duly served on Appellees, and service thereof is hereby accepted and acknowledged, in compliance with Rule 13, Subdivision 9, of this Court, and Appellee waives their statement of additional parts of the record deemed material, and it is stipulated that the whole record as certified and heretofore stipulated upon as shown by Præcipe for transcript is to be printed and constitute the record necessary for consideration of the points relied upon by Appellant.

Edward L. O'Connor, L. W. Powers, Attorneys for Appellees. Geo. S. Wright, Addison G. Kistle, Paul E. Roadifer, Attorneys for Appellant.

[fol. 365] [File endorsement omitted.]

Endorsed on cover: File No. 38,158. S. Iowa D. C. U. S. Term No. 555. MonaMotor Oil Company, appellant, vs. Ray E. Johnson, Treasurer of the State of Iowa, et al. Filed October 27, 1933. File No. 555, O. T., 1933.

FILED

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 685

MONAMOTOR OIL COMPANY, APPELLANT,

vs.

RAY E JOHNSON, TREASURER OF THE STATE OF IOWA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

STATEMENT AS TO JURISDICTION.

GEORGE S. WRIGHT,
ARTHUR G. ROSSER,
PAUL E. ROSSER,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 555

MONAMOTOR OIL COMPANY, APPELLANT,

vs.

RAY E JOHNSON, TREASURER OF THE STATE OF IOWA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

STATEMENT OF JURISDICTION IN CONFORMITY TO RULE XII OF THE SUPREME COURT OF THE UNITED STATES.

This is an appeal from the final hearing before a three-judge court and its refusal to grant injunction against officers of the State of Iowa, enjoining them from enforcing the gasoline tax statutes of Iowa as against the complainant, MonaMotor Oil Company, upon the ground of unconstitutionality of such statutes, and the further ground of the unconstitutional method of enforcement of the same by the officers of the State of Iowa.

The case is one brought under Section 266 of the Judicial Code, and a restraining order was issued and an interlocutory injunction was asked and pressed.

The statutory provisions believed to sustain the appellate jurisdiction of this Court are Sections 266 and 238 of the Judicial Code.

It was claimed in the trial court, and will be claimed on appeal, that the statutes of the State of Iowa, in their relation to the plaintiff, MonaMotor Oil Company, are in contravention of the interstate commerce clauses of the Constitution of the United States, and the levying of the tax constitutes a direct burden on interstate commerce, and that such statutes are in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States and deny to the MonaMotor Oil Company the equal protection of the law, and take its property without due process of law.

The statutes of the State of Iowa which are claimed to be unconstitutional and void, and the enforcement of which is claimed to be in an unconstitutional manner, are as follows:

Chapter 251-A1, Code of Iowa, 1927, is as follows:

Gasoline License Tax.

5093-*a*1. Amount of Fee.—A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all gasoline used or otherwise disposed of in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided. (41 G. A., ch. 6, Sec. 1; 42 G. A., ch. 248, Sec. 1.)

Additional fee of one cent, Sec. 4755-*b*38.

5093-*a*2. Definition of Terms.—The term "distributor" as used in this chapter shall mean any person

who brings into the state or who produces, refines, manufactures or compounds within the state any gasoline to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary gasoline tank attached to and forming a part of such motor vehicle, not more than twenty gallons of gasoline without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa. (41 G. A., ch. 6, Sec. 2.)

5093-*a*3. Sale Price Placard—Misdemeanor—Penalty.—Any person who sells or offers for sale at retail gasoline in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the total sale price per gallon including license fee, of all grades of gasoline sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts of rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days. (41 G. A., ch. 6, Sec. 3; 42 G. A., ch. 248, Sec. 2.)

5093-*a*4. Certificate—License.—Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of gasoline in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name

under which such distributor is transacting business within the state of Iowa, and the principal place of business of such distributor. If such distributor is a firm or copartnership, the certificate shall also contain the names and addresses of the several persons constituting the same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined, shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of gasoline within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section. (41 G. A., ch. 6, Sec. 4; 42 G. A., ch. 248, Sec. 3.)

Referred to in Sec. 5093-*a*7.

5093-*a*5. Reports—Remittances—Rebates—Penalties.—On or before the twentieth day of each calendar month each distributor of gasoline shall file in the office of the treasurer of state, at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of gasoline imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which gasoline is imported into the state of Iowa. At

the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any gasoline in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the gasoline fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 5093-a8.

If any distributor of gasoline shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within thirty days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42 G. A., ch. 248) nor any of its pro-

visions shall apply to foreign or interstate commerce. (41 G. A., ch. 6, Sec. 5; 42 G. A., ch. 248, Sec. 4.)

Referred to in Sec. 5093-*a7*.

5093-*b1*. Tank Car Reports—Inspection of Books.—Every railroad company, or other person, firm or corporation transporting gasoline in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of gasoline received at the station or place during the preceding calendar month, the name of the consignor and the name of the consignee. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of gasoline as herein defined shall be subject to inspection during ordinary business hours by the treasurer or his representatives. (42 G. A., ch. 248, Sec. 5.)

Referred to in Sec. 5093-*a7*.

5093-*a6*. Books Open to Inspection.—The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of gasoline shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation, shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars. (41 G. A., ch. 6, Sec. 6.)

5093-*a7*. Misdemeanor—Penalty.—Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to the treasurer as herein prescribed, or shall refuse to

permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093-*a*4, 5093-*a*5 and 5093-*b*1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor. (41 G. A., ch. 6, Sec. 7; 42 G. A., ch. 248, Sec. 6.)

5093-*a*8. Reimbursement—Procedure—False Statement.—Any person who shall buy or use any gasoline for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any gasoline for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase which statement shall set forth the total amount of gasoline so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from the funds operated* by the

* According to enrolled bill.

license fee collected on the use of gasoline as herein provided, the amount of such license fee paid by such consumer on gasoline used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose within ninety days after the date on which such gasoline shall have been purchased as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for the refund of any money or license fee as herein provided or who shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars. (41 G. A., ch. 6, Sec. 8; 42 G. A., ch. 248, Sec. 7.)

Referred to in Secs. 5093-*a*5, 5093-*a*10.

5093-*a*9. Distribution of Proceeds.—License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. One-third to the county road fund and one-third to the township road fund, which county and township funds, the treasurer shall apportion among the counties of the state in the same ratio that the area of the county bears to the total area of the state, and on the first days of each month shall remit to the treasurer of each county the apportionments for its county and township road fund. The county treasurer, thereupon shall apportion such township road fund among the townships of the county in the same ratio that the number of miles of township roads in the township bears to the total number of miles of township roads within the county, and shall remit quarterly to the clerk of each township the apportionment for its township road fund. (41 G. A., ch. 6, Sec. 9.)

5093-*a*10. Refunds quarterly.—The refunds provided for in section 5093-*a*8 shall be made, quarterly, by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state. (41 G. A., ch. 6, Sec. 10.)

5093-*a*11. Employees—Appropriation.—The treasof state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein. (41 G. A., ch. 6, Sec. 10-*a*1.)

5093-*a*12. Act Separable.—If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter. (41 G. A., ch. 6, Sec. 11; 42 G. A., ch. 248, Sec. 9.)

Chapter 251-A1, Code of Iowa, 1931, is as follows:

Motor Vehicle Fuel Tax.

5093-*a*1. Amount of Fee.—A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided. (C'27, Sec. 5093-*a*1; 44 G. A., ch. 108.)

Additional fee of one cent, Sec. 4755-*b*38.

5093-*a*2. Definition of Terms.—The term "distributor" as used in this chapter shall mean any person who

brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary motor vehicle fuel tank attached to and forming a part of such motor vehicle, not more than twenty gallons of motor vehicle fuel without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa.

"Motor vehicle fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose, except the products commonly known as kerosene and/or distillate or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel. (C'27, Sec. 5093-*a*2; 44 G. A., ch. 108.)

5093-*a*3. Sale Price Placard—Misdemeanor—Penalty.—Any person who sells or offers for sale at retail motor vehicle fuel in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the total sale price per gallon including license fee, of all grades of motor vehicle fuel sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one

hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days. (C27, Sec. 5093-*a*3; 44 G. A., ch. 108.)

5093-*a*4. Certificate—License.—Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of motor vehicle fuel in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the state of Iowa, and the principal place of business of such distributor. If such distributor is a firm or copartnership, the certificate shall also contain the names and addresses of the several persons constituting same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined, shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of motor vehicle fuel within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section. (C27, Sec. 5093-*a*4; 44 G. A., ch. 108.)

Referred to in Sec. 5093-*a*7.

5093 *c*2. Distributor Requirements. Before any distributor shall engage in business as defined in this chapter, he shall first file with the treasurer of state a statement showing financial responsibility satisfactory to said department, or a corporate surety bond payable to the state of Iowa in the penal sum of one thousand dollars, conditioned that said distributor will pay to the state of Iowa any and all fees required by the law. Said bond or financial statement shall be approved by the treasurer of state. No license shall be issued unless the bond or financial statement, required herein is attached to and delivered to the treasurer of state with the application for said license. If any distributor now engaged in business fails to file the bond, or financial statement, required by this section within thirty days after the effective date thereof, his license shall be revoked. (43 G. A., ch. 29, Sec. 1.)

5093 *a*5. Reports—Remittances—Rebates—Penalties. On or before the twentieth day of each calendar month each distributor of motor vehicle fuel shall file in the office of the treasurer of state, at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of motor vehicle fuel and or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which motor vehicle fuel is imported into the state of Iowa. If no importations are made for the preceding calendar month, a report shall be made to that effect on the forms prescribed herein, and in the same manner. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any motor vehicle fuel in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state; the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the motor vehicle fuel fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 5093-*a*8.

If any distributor of motor vehicle fuel shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within ten days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42 G. A., ch. 248) nor any of its provisions shall apply to foreign or interstate commerce. (C'27, Sec. 5093-*a*5; 43 G. A., ch. 29, Sec. 2; 44 G. A., ch. 108.)

Referred to in Sec. 5093-*a*7.

5093-*b*1. Tank Car Reports—Inspection of Books.—Every railroad company, or other person, firm or cor-

poration transporting motor vehicle fuel in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of motor vehicle fuel received at the station or place during the preceding calendar month, the name of the consignor, the name of the consignee, the number of gallons of motor vehicle fuel and or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of motor vehicle fuel as herein defined, shall be subject to inspection during ordinary business hours by the treasurer or his representatives. (G 27, Sec. 5093-*b*4; 44 G. A., ch. 108.)

Referred to in Sec. 5093-*a*7.

5093-*a*6. Books Open to Inspection.—The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of motor vehicle fuel shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars. (G 27, Sec. 5093-*a*6; 44 G. A., ch. 108.)

5093-*a*7. Misdemeanor—Penalty. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to

the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of motor vehicle fuel, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093 *a*4, 5093 *a*5 and 5093 *b*1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor." (C'27, Sec. 5093 *a*7; 44 G. A., ch. 108.)

5093 *a*8. Reimbursement Procedure. False Statement. Any person who shall buy or use any motor vehicle fuel for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any motor vehicle fuel for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase which statement shall set forth the total amount of motor vehicle fuel so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from

the funds collected hereunder, the amount of such license fee paid by such consumer on motor vehicle fuel used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose within ninety days from the date on which such motor vehicle fuel shall have been purchased as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for the refund of any money or license fee as herein provided or who shall collect or cause to be repaid to him or any person any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars. (C'27 Sec. 5093-*a*8; 44 G. A., chs. 108, 124.)

Referred to in Secs. 5093-*a*5, 5093-*a*10.

5093-*a*9. Distribution of Proceeds.—License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund, two-thirds to the secondary road construction fund of the several counties of the state. The treasurer shall apportion said two-thirds portion among the counties of the state in the ratio that the area of each county bears to the total area of the state, and shall, on the first day of each month, remit to the treasurer of each county the amount apportioned to the secondary road construction fund of the county. (C'27, Sec. 5093-*a*9; 43 G. A., ch. 20, Sec. 75.)

5093-*a*10. Refunds Quarterly.—The refunds provided for in section 5093-*a*8 shall be made quarterly by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants

for refunds certified to him by the treasurer of state. (C27, Sec. 5093-*a*10.)

5093-*a*11. Employees — Appropriation. — The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein, and to pay the cost of postage, equipment, supplies and printing, used by the department. (C27, Sec. 5093-*a*11; 44 G. A., ch. 125.)

5093-*a*12. Act Separable.—If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter. (C27, Sec. 5093-*a*12.)

Section 4755-*b*5, Code of Iowa, 1927, is as follows:

4755-*b*5. Refunds.—Where additional right of way has been acquired, or where bridges have been built on the primary roads under the supervision of the highway commission, and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges out of the primary road fund within five annual payments from the taking effect of this chapter; the first payment to be made January 1, 1928, and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall at the option of the board of supervisors of said county be placed to the credit of the county road fund or the county bridge fund. (38 G. A., ch. 237, Sec. 4;

39 G. A., ch. 20, Sec. 1; 39 G. A., ch. 188, Sec. 2; 40 G. A., ch. 84, Sec. 1; C. '24, Sec. 4690; 42 G. A., ch. 101, Sec. 5; 42 G. A., ch. 103, Sec. 1.)

Attempt is here made with great difficulty to apply 42 G. A. ch. 103, Sec. 1, as an amendment to 42 G. A., ch. 101, Sec. 5.

The provision of 42 G. A., ch. 101, Sec. 5, relating to payments made during 1927 has been omitted because purely temporary.

For that part of the amendment relating to the additional tax on gasoline, see Sec. 4755-*b*38.

Sec. 4755-*b*38, Code of Iowa, 1927, is as follows:

4755-*b*38. Gasoline — Additional Tax. — There is hereby levied on all gasoline imported and used within this state a license fee of ~~one cent per gallon, which shall be in addition~~ to the license fee levied by Chapter 251-*a*1. All of the provisions and conditions of said chapter 251-*a*1 relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund. (42 G. A., ch. 103, Sec. 1.)

Section 4755-*b*5, Code of Iowa, 1931, is as follows:

4755-*b*5. Refunds.—Where additional right of way has been acquired or where bridges or culverts have been built on the primary roads under the supervision of the highway commission and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges or culverts out of the primary road fund in seven annual payments. Provided, however, in counties where the total refund does not exceed the sum of five thousand dollars, the entire refund shall

be made at the time of the first annual payment. The first payment shall be made January 1, 1928, and the Board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall, upon their receipt by the county, be placed to the credit of the secondary road construction fund unless heretofore pledged.

Payments already made under the section for which this section is a substitute shall be readjusted by the highway commission to conform herewith. (C'24, Sec. 4690; C27, Sec. 4755-*b*5; 42 Ex G. A., ch. 3; 43 G. A., ch. 20, Sec. 74.)

The precautionary nonrepeal clause, being the last sentence of Sec. 1, ch. 3, 42 Ex G. A., has been omitted.

Section 4755-*b*38, Code of Iowa, 1931, is as follows:

4755-*b*38. Motor Vehicle Fuel—Additional Tax.—There is hereby levied on all motor vehicle fuel imported and used within this state a license fee of one cent per gallon, which shall be in addition to the license fee levied by chapter 251-*a*1. All of the provisions and conditions of said chapter 251-*a*1 relating to the levy, collection or payment of the license fee on motor vehicle fuel shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge, culvert and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund. (C27, Sec. 4755-*b*38; 42 Ex G. A., ch. 3; 44 G. A., ch. 108.)

Two-cent motor vehicle fuel tax, Sec. 5093-*a*1.

The decree was entered dismissing the bill of complaint, on final hearing, on March 29, 1933. The application for appeal was presented to the trial court on June 17, 1932.

The cases which sustain the jurisdiction of the Supreme Court to which appeal was taken are:

Interstate Busses Corp. v. *Blodgett*, 276 U. S. 245;
Clark v. *Poor*, 274 U. S. 554;
Smith v. *Wilson*, 273 U. S. 388;
Moore v. *Fidelity & Deposit Co.*, 272 U. S. 317, 320, 321;
Peet Stock Remedy Co. v. *McMullen*, 32 Fed. (2d) 669, (C. C. A. 8).

The plaintiff and appellant, Mona Motor Oil Company, is making this statement in conformity with Rule XII of the rules of the Supreme Court of the United States.

MONA MOTOR OIL COMPANY,
By GEO. S. WRIGHT,
ADDISON G. KISTLE,
PAUL E. ROADIFER,
Its Attorneys.

We, Edward L. O'Connor, Attorney General, L. W. Powers and Clair Hamilton, attorneys for the defendants, appellees, in the above entitled cause, hereby acknowledge service of the above statement, both for ourselves and for the above named defendants, appellees, and copy of said statement in said cause. All done this 17th day of June, 1933.

EDWARD L. O'CONNOR,
C. E. HAMILTON,
L. W. POWERS,
Attorneys for Defendants-Appellees.

OCTOBER [illegible]

NO. [illegible]

MONAMOTOR OIL COMPANY,

vs.

RAY E. JOHNSON, Treasurer of the [illegible]

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT [illegible]

BRIEF OF APPELLANT

[illegible]
Attorneys for [illegible]
PAUL E. [illegible]
of Counsel [illegible]
M. D. [illegible]
of Counsel [illegible]

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In the Supreme Court of the United States

OCTOBER TERM, 1933

NO. 555

MONAMOTOR OIL COMPANY, A CORPORATION,
Appellant,

vs.

RAY E. JOHNSON, Treasurer of the State of Iowa; JOHN FLETCHER, Attorney General of the State of Iowa; J. J. HESS, Assistant Attorney General of the State of Iowa; PERCY A. LAINSON, Sheriff of Pottawattamie County, Iowa; and AMERICAN SURETY COMPANY OF NEW YORK, Bondsmen for Ray E. Johnson, Treasurer of the State of Iowa,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA

BRIEF OF APPELLANT

I.

OFFICIAL REPORT OF OPINION BELOW

The opinion of the District Court of the Southern District of Iowa, Western Division, at Council Bluffs, Iowa, in this case is reported in Vol. 3, Fed. Suppl. No. 4, at page 189 and appears also in the record (Record pages 79 to 132 incl.).

II.

STATEMENT OF THE CASE.

At the commencement of this statement we desire to define and present the issues as presented by plaintiff's bill of complaint.

The Bill of Complaint.

The Bill of Complaint is voluminous and involved, as stated by the opinion of the lower court, but we do not feel that it is prolix. The ultimate operative facts existing upon which the plaintiff must rely being so numerous, and the manner of the violation of plaintiff's constitutional rights by the many sections of the statute and by the many acts of the officers, being so diverse, that the stating of each concisely without repetition accounts for the volume, and the bill for the same reason is involved.

To now get before this Court the issues by a brief statement is practically impossible, and for a complete statement the bill itself must be examined (See Record pp. 1 to 47 incl.).

To briefly state: The Bill of Complaint states facts and acts which constitute continuing violations of the constitutional rights of plaintiff, by reason of the unconstitutional provisions of the statutes relative to a license fee computed on gasoline, and the construction placed thereon by the officers of the State, and enforcement of the statutes so construed by the officers, (said officers being clothed with statutory authority to enforce said statutes), in an unconstitutional manner, together with the facts showing irreparable injury to the business and property of the complainant, and the inadequacy of any remedy at

law, all as a basis for injunctive relief as against such officers.

The Bill states:

That the plaintiff is an Arizona corporation, doing business in Iowa and many other states as a foreign corporation with its principal place of business at Council Bluffs.

That the defendants and substituted defendants are officers of Iowa, clothed with statutory authority to enforce the gasoline and motor fuel statutes of Iowa and collect the taxes thereunder.

The gasoline tax laws are set out at length.

That the business of the plaintiff is extensive and consists of the buying, manufacturing, blending and selling of gasoline and kindred products, the importing into Iowa of gasoline by tank cars, trucks and other containers for the purpose of resale by itself to customers, and to dealers who resell to customers (many of the importations being directly to such dealers, the delivery being made in the original containers upon orders so that the gasoline does not come to rest in the hands of complainant), the exporting of gasoline to other states, the maintenance of large bulk and storage tanks in Iowa, principally at Council Bluffs, from which deliveries are made in Iowa and to other states, the maintenance and operation of a refinery at Carter Lake, Iowa, where gasoline is manufactured, blended and compounded in the State of Iowa and stored in bulk and storage tanks from which tanks the gasoline so stored is shipped to points in Iowa and to other states.

That the company maintains many service stations in Iowa, selling gasoline to customers of these stations.

That the company was required to and did take out a distributor's license in Iowa, authorizing it to engage in the business of a distributor of motor vehicle fuel in Iowa.

That from May, 1927 to May, 1932, the Treasurer of Iowa collected the total sum of $461,699.83 as license fees on gasoline, all of which was paid under legal duress imposed by the statutes, whereby a failure to pay would subject the company to statutory penalties, cancellation of its license, and criminal prosecution.

That included in the amount so paid, from January 1, 1929, to March 31, 1932, the treasurer has required the company to file reports of gasoline imported into Iowa and required the payment of .3 cents per gallon license fee computed thereon, and in addition thereto has required to be reported as gasoline imported, gasoline manufactured at Carter Lake, Iowa, and imposed and collected under the same statutory duress $134,324.70 upon the gasoline so refined and manufactured.

That in addition to the amount so illegally collected, the treasurer is now asserting the right to collect the sum of $27,455.01 as a tax on gasoline manufactured at Carter Lake, Iowa, and for failure to report the gasoline so manufactured as imported gasoline and pay the license fee based thereon, has filed ten criminal charges by preliminary information, caused indictments to be returned, has commenced civil action aided by attachment, attached the property of the company, has without notice or hearing

cancelled the license to do business as a distributor, and notified the defendant of the lack of further right to do business in Iowa.

That the treasurer continues to assert the right to collect license fees from said company, and for the months of April, May, June, July and August, 1932, has demanded reports of imported gasoline, to include that manufactured in Iowa, and has collected by threats of the penalties of the statute and of cancellation of the distributor's license, in spite of the written protest of the company, for April $10,860.75, May $10,389.12, June $12,581.07, July $7,830.03, August $9,553.68, and continues to demand such reports and payments.

The legal duress under which the payments were made, the irreparable injury to the business and property resultant from the liability to criminal prosecution which a failure to further comply with the demands of the officers and resultant from an enforcement of statutory penalties, and the resultant penalties for doing business without license, are fully pleaded as the basis for injunctive relief.

In addition to the foregoing acts of the officers under their adopted construction of the statutes, the statutes are set out in the petition.

There follows the allegations of fact as to the violation of complainant's constitutional rights by the acts of the officers in the enforcement of said statutes and by reason of the statutes themselves.

The complaint then alleges that the statutes are void and unconstitutional in that they violate the terms of the Constitution of Iowa and of the United States. That the

construction placed on the statute, and the acts of the officers thereunder, violate the constitutional rights of complainant granted by the Constitution of Iowa and the United States.

That Chapter 103 of the laws of the 42nd G. A., and particularly Section 1 thereof which appears as Section 4755-b5 and 4755-b38 of the Code of Iowa, 1927 and 1931, which attempts to provide a license fee of one cent per gallon on all gasoline *imported* and used, is null and void for the following reasons:

(a) That said law was never enacted in that Chapter 103 was an act to amend Senate File No. 104, of the 42nd General Assembly, and does amend such act by striking from line six thereof the word and figure "three," and from that point on nothing is enacted in lieu thereof.

(b) That the title to the act expresses no object to which the tax is applied, but refers to another law to fix such tax or object, and that such attempt to so enact the law is a direct violation of the Constitution of the State of Iowa and the sections hereinafter referred to.

(c) The tax being laid against gasoline is a property tax and is against gasoline imported and used in the state, and thereby imposes a burden on interstate commerce and denies the distributor the equal protection of the law. It is arbitrary and unjust and imposes on interstate commerce and interstate commerce business conducted by this plaintiff, a burden contrary to and in violation of the provisions of Article I, Section 10, Paragraph 2, of the Constitution of the United States relating to interstate commerce; and said provision discriminates directly

against the plaintiff as an importer of gasoline, imposing thereon a tax of one cent, while all other gasoline such as might be manufactured and used in the State of Iowa is exempt from the operation of the state statute. That said discrimination is in direct violation of Art. I, Section 10, Paragraph 2, and Art. I, Section 8 of the Constitution of the United States.

That Sections 4755-b5 and 4755-b38 of the 1931 Code of Iowa are unconstitutional and void and are a direct violation of the constitutional rights of the plaintiff as defined by the Constitution of the State of Iowa, Article III, Section 29, as follows:

> "Acts. One Subject Expressed in Title. Section 29. Every act shall embrace but one subject and matter properly connected therewith, which subject shall be expressed in the title. But for any subject which shall be embraced in the act which shall not be expressed in the title such act shall be void only as to so much thereof as shall not be expressed in the title."

Article VII, Section 7, Constitution of Iowa, which reads:

> "Tax Imposed Distinctly Stated. Sec. 7. Every law which imposes, continues or revises a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object."

That the sections last above referred to were enacted by the Legislature, and the title to said act and the act amended are fully set out and are hereby referred to. That said title to the act in no manner refers to a tax on gasoline, and this part of the subject of the act is in no manner referred to or expressed in the title of said act

and in the body thereof in no manner expresses the object to which it is to be applied. That by reason of said defect, the act is a direct violation of the Constitution of the State of Iowa, and is null and void and of no force and effect.

That the statutes last above referred to, imposing a 1 cent tax upon gasoline *imported* and used in Iowa, deprives the plaintiff of its right to protection under the United States Constitution against unjust discrimination, and is in violation of Article I, Sections 8 and 10 of the Constitution of the United States.

That said act provided for a tax upon gasoline imported and used, and thereby places a direct burden upon the interstate commerce and the business conducted by this plaintiff as interstate commerce business, and the provisions of said act deprive the plaintiff of its right to the protection of the Constitution of the United States, and is in direct contravention of Article I, Section 1, Paragraph 2 of the Constitution of the United States.

That Chapter 251-a1 of the Code of 1931, and all acts therein referred to from which said sections are derived, are each and all of them, and said chapter is unconstitutional and void and is a direct violation of the rights of the plaintiff and deprives the plaintiff of equal protection of the law, and deprives the plaintiff of its right to due process of law in said act, as it imposes upon the plaintiff the duty to report upon imported gasoline only, and attempts to compute thereon a tax of 2 cents per gallon upon all of such imports and upon such imports only, and lays the tax as against the user of gasoline for the propelling of a motor vehicle upon the highway, and attempts to enforce the payment of the tax laid against such user

upon the distributor who is in no manner liable for said tax, and thereby attempts to make said distributor responsible for the payment of a tax of a third party directly liable therefor, and such an act is in violation of the constitutional rights of the plaintiff under the constitution of the State of Iowa.

That said act provides for certain penalties and for a license to do business in the State of Iowa, conditioned upon the payment of a license fee referred to in said act, and is attempted to be enforced conditioned upon the distributor (this plaintiff) paying to the State of Iowa said license fee imposed upon said gasoline, with a penalty for their failure to report and pay the license fee for which it is not charged or made liable, without hearing or any process of law. The penalties may be inflicted and the license cancelled and the right to do business, both interstate and intrastate, thereby prevented, and that such an act containing such provisions is in direct violation of Article 1, Section 10, Paragraph 2, of the Constitution of the United States.

That the act as construed and enforced by the State of Iowa imposes a direct burden upon the interstate business of plaintiff as applied to imported gasoline only, and as so interpreted and applied deprives the plaintiff of its constitutional rights as provided for by Article I, Section 10, Paragraph 2 of the Constitution of the United States, and imposes a direct burden upon interstate commerce, in violation of the provisions of said Constitution.

That that portion of said act, insofar as the same gives to the defendant, Ray E. Johnson, Treasurer of the

State of Iowa, the right, power and authority to suspend or revoke the license of plaintiff, or purports to do so, as a method of compelling the payment of taxes alleged by him, not found to be due, and prior to any hearing or opportunity to be heard where the question of amount of liability of the plaintiff or amount overpaid can be heard or determined, is illegal, unconstitutional and void for the following reasons:

1. It is unlawful under and by virtue of the laws to thus destroy the property and business of the plaintiff as a means of compelling it to pay an alleged tax the value of which has never been determined or a hearing had thereon or afforded.

2. That to so suspend or cancel the license of the plaintiff under and by virtue of statute, as in Iowa enacted, and thus destroy the value of its property and business in the state of Iowa and in other states and its interstate business, under the facts herein set out, as a matter of compulsion to compel the plaintiff to pay an illegal tax, is in contravention of Section 1 of the Fourteenth Amendment of the Constitution of the United States, and denies to the plaintiff the due process of law guaranteed by such constitution and the constitution of Iowa, and is in contravention of the Constitution of the United States guaranteeing to the plaintiff equal protection of the law, and is in contravention of Article I, Section 10, Paragraph 2 of the Constitution of the United States relating to interstate commerce, in that it seeks to compel the plaintiff to submit to an illegal, unconstitutional burden upon its interstate commerce business under

compulsion and pain of destruction of its interstate business in Iowa and interstate business with customers outside of the State of Iowa and in the State of Iowa, and further destruction of its property, both real and personal, in the state of Iowa.

That the acts of the defendants, as hereinabove set out, and complained of, and the methods adopted by the Treasurer of the State of Iowa and by the other defendants to attempt to collect taxes claimed to be now due and such as will become due in the future, are in direct contravention of the rights of this plaintiff as guaranteed to it under the several sections of the Constitution of the United States as hereinabove referred to, and the Constitution of the State of Iowa.

That either under the statute, or under the construction of the statute by the Treasurer of the State of Iowa and its officers, in applying the same as affecting the MonaMotor Oil Company, and the acts done thereunder, and each of them, in attempting to collect the claim for unpaid taxes and in collecting all the taxes heretofore, and in attempting to collect taxes in the future, are unconstitutional and void, and directly violates the constitutional rights under each and every section of the Constitution of the United States hereinbefore specifically referred to, and the Constitution of the State of Iowa.

A temporary and permanent injunction was prayed for and the right to temporary injunction was properly urged and pressed to final hearing (Record pp. 1 to 47 incl. and 63 to 73 incl.).

———o———

The Answer.

The answer alleges that the action is against the State in violation of the Eleventh Amendment to the Federal Constitution.

That the action is one to enjoin an action pending in the District Court of Pottawattamie County, Iowa.

That from the time of the enactment of the laws relative to taxes on gasoline the plaintiff has paid the tax without protest.

That the law provides for apportionment to primary road fund, and during entire period such apportionments were made.

That bonds were issued in anticipation of the tax, in amount $100,000,000.

That by reason of such facts the plaintiff is estopped.

That the tax is an excise tax and is collected from consumers by distributors, who holds same in fiduciary capacity, and is without equity in the action, and plaintiff is in no manner prejudiced by collection by the State from it.

That no refining of gasoline has been done by plaintiff since April, 1932.

Deny that they are asserting tax on gasoline in interstate commerce.

Admit the instigation of criminal prosecution, but as against plaintiff they were dismissed.

Admit commencement of civil action.

Admit cancellation of license.

Allege that all manufactured gasoline was made from imported products, and therefore the finished product was taxable as imported gasoline.

Allege that the computation of tax is on gasoline used or disposed of (Record pp. 53 to 63 and 73 to 79).

Amendment to Bill of Complaint.

By Amendment to Bill of Complaint, Leo J. Wegman, Treasurer, Edward L. O'Connor, Attorney General; Clyde L. Herring, Governor, Joe Perry, Sheriff, are named as additional defendants, and all allegations of petition made to apply to them as the newly elected and qualified officers who took the place of former defendants.

The amendment also alleges that Section 5093-a8 as applied to the whole of the gasoline statutes and in the operation and effect of said section, violates the Constitution of Iowa and the United States in that any person buying gasoline for use other than for operating motor vehicles on highway gets refunds of 3 cents per gallon from state on blanks furnished by State, and in excess of $2,000.00 has been so refunded; that the manner of enforcement imposes a tax on the distributor for the benefit of such person who buys gasoline for any other purpose than operating motor vehicles on highway, and is not a tax for public benefit (Record pp. 63 to 73 incl.).

Amendment to Answer.

By Amendment to Answer defendants allege no duty is imposed on importer to report or pay tax till the 20

days after the fuel has come to rest in Iowa, and the report refers only to motor fuel unloaded.

That there is no discrimination in 1 cent statute as against imported gasoline.

That the officers of the state have without discrimination collected tax on all gasoline used.

Deny that any tax is imposed on gasoline used outside the state.

Deny that the refund provision of the statute violates any constitutional provision.

Deny that the officers intend to commence further criminal prosecutions and deny irreparable injury (Record pp. 73 to 78 incl.).

Evidence.

Upon the trial the record disclosed no real controversy as to facts. Many of the facts were conceded by stipulation and the record evidence is not now in dispute (Record pp. 147 to 156 incl.).

The facts as applicable to the issues are as follows:

The MonaMotor Oil Company is an Arizona corporation licensed to do business in Iowa as a foreign corporation and up to the time of the cancellation of its license, was licensed to conduct the business of a distributor of motor vehicle fuel in Iowa (Record p. 147).

The company has its principal place of business at Council Bluffs, Iowa. There it maintains bulk tanks for the storage of gasoline, a large manufacturing plant manufacturing greases, oils and products used and sold in connection with the sale of motor vehicle fuel (Record p. 148).

At Carter Lake, Iowa, which is a town directly west of Council Bluffs, on the west side of the Missouri River, but in Iowa, it maintains a large refinery and bulk and storage tanks, at which point up to April 1, 1932, it was manufacturing gasoline, and since that time, gasoline has been blended from products which were not motor vehicle fuel before blended. This gasoline so manufactured, was stored in the bulk tanks at that point, and from there distributed in Iowa, Nebraska, Minnesota and other states, shipments being made by tank car, truck and in other containers to the various points. Some of this gasoline was moved from Carter Lake to Council Bluffs bulk plant (Record p. 148).

At many various points in Iowa, the company maintains and operates service stations where gasoline is sold to users of gasoline. A part of this gasoline is that manufactured at Carter Lake, Iowa, and a part of that imported from other states. The company also sells a large amount of gasoline direct to dealers and service stations owned by others than the company. A large part of this gasoline is imported, delivered to the dealer in tank cars and containers on orders prior to shipment taken in Iowa, so that when it comes to rest in Iowa, it is the property of the consignee (Record pp. 148, 149, 150).

A large part of the business of the company is the export of gasoline to Nebraska, South Dakota, Minnesota and other states, shipments being made from Council Bluffs, Carter Lake, Shenandoah, Sioux City and other points (Record p. 150).

The first gasoline tax statute in Iowa was passed by the 41st General Assembly, Chapter 6, and became a law

April 25, 1925. The original act imposed a tax of 2 cents per gallon on "all gasoline in this state for any purpose whatsoever." The user was made liable for the tax unless previously paid (Record pp. 24 to 28 also set out in appendix).

Section 5 of the original act provided for report on or before the 20th of the month of "the total number of gallons of gasoline *imported* by him, and *the total number of gallons of gasoline sold or otherwise disposed of* for the preceding month, and shall at the same time remit the amount of its license fee for the preceding month *for which such distributor is liable*" (Record p. 25, also set out in appendix).

Under these statutes the State Treasurer required to be filed on forms, Exhibit 19, showing gasoline *imported, used and disposed of*, and collected a tax of 2 cents per gallon thereon, and the company made the required reports and paid the tax so levied (Record p. 323 and 197).

In April, 1927, the law was amended. Section 1 was changed to read: "a license fee of 2 cents per gallon, or fraction of a gallon, is hereby imposed on all gasoline *used or otherwise disposed of* in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid" (Record p. 29, see also appendix).

Section 5 was repealed and the section enacted in lieu thereof omitted the words "and the total number of gallons of gasoline sold or otherwise disposed of," and "for which such distributor is liable," therefrom.

There was also at that time enacted what is referred to as the 1 cent tax, now Section 4755-b38, Code, reading in part: 'There is hereby levied on all gasoline *imported and used* within this state a license fee of 1 cent per gallon which shall be in addition'' (Record p. 30, p. 182, see also appendix).

A new form of report was made on account of the above changes in the law and form Exhibit 3 was furnished by the Treasurer. The new form, it will be noted, provided for report of invoice gallons of container of imported gasoline only. It requires a report of all gasoline imported for any purpose, 3 per cent of invoiced gallonage is deducted and on each gallon so imported is laid a license fee of 3 cents per gallon and the distributor who by the statute is no longer made liable therefor, is required by the treasurer to pay and remit the license fee based on such report regardless of where it may be unloaded and regardless of how or where used and this is true even though the gasoline is again exported (Record pp. 291 to 294 incl., p. 197, p. 182).

From April, 1927, down to the time of the commencement of this action, the MonaMotor Oil Company made such report and remitted 3 cents per gallon on this basis, the last four months being paid under protest.

The company purchased, at Carter Lake, Iowa, a refinery and erected large bulk and storage tanks at that point, these being what were referred to as refinery tanks and Carter Lake Bulk plant. The refinery, tanks and bulk plant, while located in Iowa, were on the west side of the river adjacent to Omaha, Nebraska. The company supplied these storage tanks from two sources, one from

gasoline imported and unloaded, the other from the refinery where large quantities of crude oil and other products not imported as motor vehicle fuel were refined into gasoline and other products not motor vehicle fuel, were blended into gasoline (Record p. 148, pp. 194-195).

By some rather indefinite arrangement, the gasoline imported to Carter Lake was treated as imported into Nebraska, and the part thereof used in Nebraska was not reported as imported into Iowa, and no complaint was, or is now, being made of this erroneous method of reporting. However, all gasoline moved from Carter Lake to other points in Iowa, or manufactured, was treated by the Iowa officers as imported into Iowa from that point, although it was in fact an intrastate movement, and reports were required of this gasoline so moved, as imported gasoline, and if so moved from Carter Lake to any other point in Iowa, regardless of whether the gasoline was used in, or remained in Iowa, a 3 cent license fee was computed thereon and required to be paid by the company (Record 149, 172, 180, 181, 182, 187, 188, 189, 191, 192, 194, 195, 196; Exhibit 2, Record 233, 289).

In other words, the state officers of Iowa treated Carter Lake as a point in Nebraska or [redacted] point outside the State of Iowa, regardless of the fact, and required reports of imports on all gasoline on that basis.

This continued up into April 1, 1932, at which time it was claimed by the state that some forty cars of gasoline, during the ten months preceding April, 1932, had been moved from Carter Lake, Iowa, to Council Bluffs bulk plant, and were not reported as imported gasoline.

This was gasoline manufactured at Carter Lake, Iowa (Record pp. 171, 198-199).

The officers of the State of Iowa, immediately filed ten criminal charges, by preliminary information for making false reports, against the company and its officers, one for each month in which cars of the above classified gasoline were omitted from the report. The matter was presented to the August, 1932, grand jury, and ten indictments were returned. These charges were later dismissed as to the company, after a plea of guilty by some of the officers (Record pp. 206-208, Exhibit E, p. 171).

Immediately after the informations were filed, a demand was made of the company, that the treasurer be allowed under Section 5093-a6 of the law, and employees of the treasurer entered the premises of the MonaMotor Oil Company and made an examination of the books and records, and from this examination, Wolf & Company's audit was made. This was then made public by incorporating a part in the petition filed and by furnishing copy to the Treasurer of Nebraska, in spite of the provision that "any information gained by the treasurer of state, or such representative of the state, shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor, etc" (Record pp. 164 Ex. 10, p. 212, Ex. 1).

The audit has been offered in evidence, Exhibit 2, and is set out in the record. It discloses the demands as asserted by the treasurer in the suit, aided by attachment commenced against the company. It is before this Court as showing the construction placed upon the statutes by the officers and their manner of attempting to subject the

company to this tax, not only as to these items, but demonstrates the plan of enforcement of the law generally as against the company, past, present and future.

Following the commencement of the civil action to recover taxes, the Treasurer of the State without any notice of a day of hearing and without any hearing thereon, and without any determination of right, cancelled the distributor's license of the company issued under provision of Section 5093-a4 of the Code, the Treasurer purporting to act under the provision of Section 5093-a5, wherein provision is contained for revocation of such license, the notice stating, "From this date it shall be unlawful for you to continue to engage in the *business of distributing* motor vehicle fuel in the state of Iowa" (Record pp. 164-168).

This was claimed by the Treasurer to be his duty and done as a matter of right for a failure to report and pay those items contained in the audit (Record p. 168).

The audit discloses the following facts:

A claim is asserted under Schedule One for $18,329.34 tax by reason of a movement of gasoline from Carter Lake, Iowa, to points in Iowa. This is treated as an interstate shipment and an importation of gasoline (Record 242A Exhibit A p. 172).

It also discloses that during 1929, 1930 and 1931 and for three months ending March 31, 1933, 35,930 gallons of this gasoline moved by truck from one point in Iowa to another was reported, so there can be no question that a systematic attempt was being made to tax gasoline moved

from Carter Lake, Iowa, to other points (Record p. 243, Exhibit A, Schedule 1).

Reports were required of this class of gasoline and 1,821,286 gallons have been reported. (Record p. 323, Exhibit 18).

Under Schedule Two, a claim is asserted for $10,498.08, on account of certain tank car shipments of manufactured gasoline shipped from the refinery at Carter Lake, Iowa to Council Bluffs, Iowa. This makes the fact uncontroverted that the State was at all times, attempting to impose as against this company, a tax on gasoline manufactured in Iowa as though the same was imported into Iowa from Nebraska. In addition to the claim for these tank cars omitted, many cars so moved have been reported and the tax paid, and the officers continue to assert the right to so collect on this class of gasoline and are still requiring reports thereof and tax thereon (Record p. 247 Exhibit A, Schedule 2, Exhibit 18).

Schedule Three, a claim is asserted for five cars, referred to as direct shipments and referring to the explanation, we find the term is used to indicate car load shipments of gasoline made from the oil fields direct to the customers and dealers of the company and on Folio 8, on the audit, we find twelve more cars referred to. In the Treasurer's demand and in his civil action, we find three of these cars as making up the claim for unpaid taxes. There can be no question but that the State has been and still is, insisting upon payment of 3 cents per gallon on all gasoline imported as direct shipments from Oklahoma to the consumer in Iowa, the consumer being other than the Mona Motor Oil Company, and that its

officers require report of these interstate shipments and a tax thereon as a condition precedent to the right to conduct its business in Iowa (Record 250, Exhibit A, Schedule 3, pp. 211-212).

Schedule Four, shows the extent to which gasoline manufactured in Iowa at the refinery at Carter Lake, has been taxed in the past merely because moved from points in Carter Lake, Iowa, to other points in Iowa. This is not gasoline imported into Iowa, but has been so treated and 1,508,034 gallons has been required to have been reported and the tax paid and because of a difference between invoice gallonage and reported gallonage, a further claim of $548.85 is being asserted (Record p. 250, Exhibit A, Schedule 4).

Since this trouble has arisen no gasoline has been refined but gasoline has been blended from products not motor vehicle fuel, and the officers are now and have been requiring report and tax on the gasoline so compounded at Carter Lake refinery (Record p. 148).

Schedule Five, again shows the systematic levy of license fee at 3 cents per gallon on imports as such. Each car shown thereon is gasoline imported into Iowa by the MonaMotor Oil Company treated as "direct shipments," and a 3 cent license fee is imposed on the invoice gallonage of container less 3 per cent regardless of whether used in Iowa or used and disposed of in Iowa. Tax has been paid on 5,312,160 gallons, 662 tank cars, and a further claim for tax on 37,293 gallons is being asserted on account of the shortage in gallonage between report and invoice, in dollars $1,085.22 is claimed. This schedule shows the taxation of imports as such, the present claim of right to

continue to assert such a tax, and of course demonstrates the intention to continue to so tax the company as an importer of gasoline.

This item is referred to in Folio 10. Gallonage difference on cars reported. Direct Shipments Detailed in Schedule 5. Folio 8 defines Direct Shipments as "The term 'direct shipment' is used to indicate carload shipments of gasoline made from the oil fields to customers and dealers of the Company" (Record pp. 242a-256, Exhibit A, Schedule 5).

Schedule 11, shows that credits were given for certain gasoline exported out of Iowa. In other words, the tax is first paid then if the gasoline is moved out of the state later, a credit on account is given. An additional credit of 206,467 net gallons, $6,194.01 is sought to be allowed by Schedule 11 (Record p. 282, Exhibit A, Schedule 11).

The civil action to collect the net amount referred to in the audit, is only incidentally referred to as showing the continuing claim of right to collect the tax from the Mona-Motor Oil Company, not with the thought that we can enjoin the State Court from carrying on its pending litigation. The pendency of that action and the officers' claims thereunder, is only evidence of a continued assertion of the right to in the future levy the tax against this company as in the past. Coupled with that fact is the fact that the officers are still requiring of the company, reports on the same form under the same fact conditions, and are still requiring the payment of the license fee each month up to the commencement of this action (Record pp. 210-232, 153-154).

It further appears in the record that in each year large amounts were paid to consumers of gasoline for other purposes than that of propelling a motor vehicle on the highway, to-wit:

From May 1925 to January 1933, $6,423,550.79 and that these payments were made as provided by Section 5093-a8 of the Code, even though the distributor paid the tax, but a gallonage 3 per cent greater is refunded, than the tax collected from the MonaMotor Oil Company. It also appears that the officers, in the enforcement of the statute, have, after collecting the tax allowed an offset on amounts for gasoline shipped out of Iowa. To illustrate:

"A" imports 100,000 gallons in tank cars January 1933; assume this is his first importation. He places this in bulk storage. He reports the tank cars, the invoice gallonage, deducts 3 per cent for evaporation and loss and pays 3 cents per gallon. Assume this gasoline remains in storage till March, 1933, when a part is shipped to Nebraska. Then on April 20th, "A" reports this as exported and a credit is given at 3 cents per gallon for the amount so exported. If he then owes additional tax, than that first paid to the amount of the credit, he can deduct the amount. He gets a credit, not a refund of the original tax paid. There is no provision in the law for such a credit. This credit is due only to the manner of enforcement by the officers (Record p. 166, Exhibit 10, pp. 173-181).

A further fact appears in the record. This tax is being asserted against the MonaMotor Oil Company on imported gasoline as such. Under the statute, gasoline blended, compounded or manufactured is not required to

be reported under the forms used nor does the statute provide for report on anything but imported gasoline (now motor vehicle fuel), and only such fuel is being taxed. By including gasoline manufactured at Carter Lake, Iowa, in required reports and treating this class as imported gasoline the company has paid Iowa license computed upon 4,477,490 gallons more than the gallons actually imported by them (Record p. 322a, Exhibit 18).

The Coryell Company has been blending large quantities of gasoline in Iowa and is not reporting or paying tax thereon. They are a competitor; a distributor in Iowa. No liability is imposed upon them as a manufacturer or compounder of motor vehicle fuel. While the state claims the right to tax as against the Coryell Company for this gasoline blended, the statute imposes no liability and to this extent at least, discrimination is shown as against the MonaMotor Oil Company as an importer (Record pp. 183, 184, 185).

The statutes are set out at length in the record and in appendix.

III.

SPECIFICATION OF ERRORS.

Point I.

That the Court erred in refusing and denying the relief sought by the plaintiff, and in dismissing the petition of the plaintiff for the following reasons, to-wit:

(a) The defendants sought and were seeking to enforce a 3 cent license fee computed on gasoline (motor vehicle fuel) based upon a 2 cent license fee contained in

Chapter 251-a1 of the Code of Iowa, 1927, which applied to part of the period, and Chapter 251-a1 of the Code of Iowa, 1931; and a 1 cent per gallon license fee upon gasoline as provided for by Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927 and on motor vehicle fuel as provided by Section 4755-b38 of the Code of Iowa, 1931, as if the same were a 3 cent license fee on the same thing, when said statutes were unconstitutional and void because in their relation to the business of the plaintiff, MonaMotor Oil Company, they were so uncertain and meaningless that the enforcement of the statute amounts to the taking of private property of the Mona Motor Oil Company without the due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, and denies to the complainant, the equal protection of the law.

(b) That Chapter 251-a1 of the Code of Iowa, 1927, and as amended and appearing in the Code of Iowa, 1931, it is in contravention of the Constitution of the United States as construed by the trial court, and in fact as authorizing the collection of a 2 cent tax on gasoline (motor vehicle fuel), as a 2 cent tax per gallon on gasoline (motor vehicle fuel) imported into the State of Iowa by the MonaMotor Oil Company, and therefore is a tax and burden upon interstate commerce and contrary to the commerce clause of the Constitution of the United States.

(c) That Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1931, is in contravention of the Constitution of the United States as construed by the trial court, and in fact, as authorizing the collection of a

1 cent tax on gasoline (motor vehicle fuel), as a 1 cent tax per gallon on gasoline (motor vehicle fuel), imported into the state of Iowa by the MonaMotor Oil Company, and therefore is a tax and burden upon interstate commerce and contrary to the commerce clause of the Constitution of the United States.

(d) That Chapter 251-a1 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, insofar as it may warrant when properly construed, the collection of a license fee of 2 cents per gallon on gasoline (motor vehicle fuel), imported into the State of Iowa for any month as a payment of the tax or license fee, not as a debt of the importer but as a tax or license fee which may or may not subsequently become due from the user or consumer of gasoline (motor vehicle fuel), is unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company the equal protection of the law and amounts to the taking of private property of the MonaMotor Oil Company without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it would compel the MonaMotor Oil Company to pay the debt of another in the first instance, without any statutory or legal right to collect the same from the user or consumer.

(e) That Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, and Chapter 251-a1 of the Code of Iowa, 1927, and as amended and contained in the Code of Iowa, 1931, which may be part of the provisions relating to a 1 cent tax, insofar as they may warrant when properly

construed, the collection of a license fee of 1 cent per gallon on gasoline (motor vehicle fuel), imported into the State of Iowa for any month as the payment of the tax or license fee, not as a debt of the importer, but as a tax or license fee which may or may not subsequently become due from the user or consumer of gasoline (motor vehicle fuel), is unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company the equal protection of the law and amounts to the taking of the private property of the MonaMotor Oil Company without due process of law contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it would compel the MonaMotor Oil Company to pay the debt of another in the first instance, without any statutory or legal right to collect the same from the user or consumer.

(f) That the record shows conclusively that the MonaMotor Oil Company was engaged in interstate business of selling gasoline (motor vehicle fuel), in original containers, and that a large part of its business was such interstate business and insofar as Chapter 251-a1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b5 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, authorizes and compels the MonaMotor Oil Company to make reports of gasoline (motor vehicle fuel), *imported* by it and to pay 3 cents per gallon license fee or tax thereon, without statutory right of reimbursement from the purchaser of such gasoline (motor vehicle fuel),

in original containers such as tank cars, etc., the said acts are unconstitutional and void and contrary to the commerce clause of the Constitution of the United States, and denies to the MonaMotor Oil Company, the equal protection of the law, contrary to the Constitution of the United States, and amounts to the taking of private property of the MonaMotor Oil Company without due process of law, contrary to Section I of the Fourteenth Amendment to the Constitution of the United States.

(g) In view of the fact that Chapter 251-a1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b5 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and each of them, affords no method of separation of the gasoline (motor vehicle fuel), *imported* in tank cars and original containers, as a part of the interstate business of the MonaMotor Oil Company in its sale in original containers to distributors, which is a substantial part of the business of the MonaMotor Oil Company, from the business of the MonaMotor Oil Company as a retailer of gasoline (motor vehicle fuel), to enforce the statutes against the MonaMotor Oil Company, if either imposes a liability on the MonaMotor Oil Company for the payment of the tax measured by the aggregate of gasoline (motor vehicle fuel), *imported*, and computing a tax of 3 cents per gallon thereon, renders said acts and each of them in their enforcement and operation, unconstitutional and void, and contrary to the commerce clause of the Constitution of the United States as a direct burden on interstate commerce,

and denies to the MonaMotor Oil Company the equal protection of law in the conduct of its interstate business, and takes the private property of the MonaMotor Oil Company without due process of law, contrary to Section I of the Fourteenth Amendment of the Constitution of the United States.

(h) That Chapter 251-a1 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, and said chapter as a part of Section 4755-b5 and Section 4755-b38 of the Code of Iowa, 1927, and as amended by the Code of Iowa, 1931, insofar as it authorizes the Treasurer of the State of Iowa, without notice, as the record shows here was done, to cancel the license and authority of the MonaMotor Oil Company to engage in its interstate business of selling gasoline (motor vehicle fuel) in original containers, such as tank cars, etc., being a substantial part of its business because of the alleged nonpayment of tax or license fees, based upon and measured wholly by *imported* gasoline (motor vehicle fuel), without giving it any opportunity to be heard as to its liability therefor, or the amount thereof, amounts to and results in the destruction of its business and the taking of its property without due process of law, and contrary to Section I of the Fourteenth Amendment of the Constitution of the United States, denies to the MonaMotor Oil Company the equal protection of law.

Point II.

In view of the fact that Chapter 251-a1 of the laws of Iowa, Code of 1927 and 1931, in its relation to the interstate and intrastate business of the MonaMotor Oil Company, and its enforcement by the officials of the State of

Iowa, levies or undertakes to levy a 2 cent tax per gallon on *imported* gasoline or *imported* motor vehicle fuel, it is a tax on such *imported* property and as such on imports, and by reason thereof the Court should have declared such statutes in contravention of Sections 8 and 10, Article I, of the Constitution of the United States, and void; and erred in not so construing such acts and in not holding them unconstitutional.

Point III.

In view of the fact that the sole and exclusive measure of the amount of license fee sought against the Mona-Motor Oil Company as a distributor, under Chapter 251-a1 of the laws of Iowa, Code of Iowa, 1927 and 1931, is the amount of gasoline (motor vehicle fuel) *imported* into the State of Iowa, the tax is against *imported* gasoline or motor vehicle fuel as such, and is a direct burden on interstate commerce contrary to the commerce clause, Sections 8 and 10 of the Constitution of the United States, and void, and the Court erred in not so holding, and in not granting to complainant the relief sought, by the enjoining enforcement of the acts against it.

Point IV.

That the record shows other firms and corporations were mixing, blending and compounding gasoline and motor vehicle fuel in the State of Iowa, and that the Court erred by reason of such facts in not holding that Chapter 251-a1 of the Code of Iowa, 1927 and 1931, and Sections 4755-b5 and 4755-b38 of the Code of Iowa, 1927 and 1931, are unconstitutional and void in that the proper interpretation thereof, gasoline and motor vehicle fuel refined or compounded and blended in Iowa, and not

imported therein, was not subject to the tax or license fee, and to tax imported gasoline or motor vehicle fuel, and exempt from the tax gasoline or motor vehicle fuel refined or blended in Iowa, constitutes an illegal discrimination contrary to the commerce clause of the Constitution of the United States, Sections 8 and 10 of Article 1, and denies to the plaintiff the equal protection of the law and takes property of the plaintiff without due process of law, all contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Point V.

By Section 5093-a1 of Chapter 251-a1, Code of Iowa, 1931:

> "A license fee of two cents per gallon or fraction of a gallon is hereby imposed on *all* gasoline (motor vehicle fuel) used or otherwise disposed of in the state for any purpose whatsoever. Any person using gasoline (motor vehicle fuel) within the state shall be liable for the fee herein provided for unless the same shall have been previously paid,"

is created a liability on the "user" of gasoline (motor vehicle fuel), and to enforce such tax on the distributor who imports gasoline, because imported is to make complainant pay another's debt and constitutes the taking of private property without due process of law and renders the whole act contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the Court erred in not so holding and granting to the complainant the relief sought.

Point VI.

That the Court erred in dismissing the petition of the plaintiff and denying the relief sought, because the

statutes of the State of Iowa referred to hereinabove, providing for the 1 cent and the 2 cent tax on gasoline (motor vehicle fuel), were unconstitutional and void for all of the reasons set out hereinabove.

Point VII.

That the Court erred in denying to the MonaMotor Oil Company the relief sought and in dismissing its petition, and in holding that said petition and the facts supporting the same were wanting in equity, and the Court should have sustained the petition and granted the plaintiff the relief sought, for all of the grounds hereinabove stated

Point VIII.

That the Court erred in its interpretation of Chapter 251-a1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, in holding that while the tax was levied on gasoline (motor vehicle fuel) used and disposed of in the State of Iowa, it was a tax against the use of such gasoline by the consumer, and that the payment of such license fee, or tax, must be made by the distributor or importer, the MonaMotor Oil Company, plaintiff; whereas, the Court should have construed the statute as levying a tax on the user of such gasoline (motor vehicle fuel), for which the distributor, MonaMotor Oil Company, was not liable, and particularly in view of the fact that the provisions of Section 5903-a5 of said acts, which originally specifically provided for liability of distributor, were repealed from said statute prior to any of the acts complained of herein. The Court erred in dismissing the petition of the plaintiff and in denying the relief sought, based upon such erroneous interpretation of the statute.

Point IX.

The Court erred in its interpretation of Chapter 251-a1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, in holding that the ultimate consumer pays the tax or license fee even though paid in the first instance by the distributor of gasoline (motor vehicle fuel) imported into the State of Iowa, even though there is no provision in the law whereby the distributor, in this case the MonaMotor Oil Company, has any right of recovery in law from the consumer of such gasoline (motor vehicle fuel). The Court erred in dismissing plaintiff's petition and in denying the relief sought, based upon such erroneous interpretation of the statutes of Iowa.

Point X.

The Court erred in its interpretation of Chapter 251-a1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, as allowing a tax upon gasoline (motor vehicle fuel), in the hands of the user or consumer, for which the distributor is liable under the statutes of Iowa.

Point XI.

The Court erred in its interpretation of Chapter 251-a1 of the Code of Iowa, 1927, and as amended in the Code of Iowa, 1931, as giving to the state the right to exact the payment of the license fee or tax from the distributor of gasoline (motor vehicle fuel), imported into the state as the prerequisite to its right to distribute and sell gasoline in interstate commerce, and in holding that the state had the right to compel the distributor, upon the pains and penalties of the act, to first pay the tax of another as a matter of regulation in its intrastate business

in such products. And that the court erred in dismissing the petition of the plaintiff and denying the relief to it, based upon such erroneous construction or interpretation of such alleged right of the state.

Point XII.

The Court erred in its interpretation of Section 4755-b5 and 4755-b38, Code of Iowa 1927, and as amended in Code of Iowa, 1931, and particularly, in interpreting the tax or license fee as levied by said acts on gasoline and motor vehicle fuel, the same as contained in Chapter 251-a1, when said acts specifically levy a tax on gasoline and motor vehicle fuel "imported and used in Iowa," and by reason thereof, erred in refusing the plaintiff the relief sought, and in denying plaintiff's petition on its merits.

Point XIII.

The Court erred in holding that Sections 4755-b5 and 4755-b38 were properly enacted, and in holding that they were not unconstitutional as violating Section 29 of Article 3, and Section 7 of Article 7, of the Constitution of the State of Iowa, and in denying to the plaintiff the relief sought, and in dismissing its petition by reason of such holding.

Point XIV.

The Court erred in holding and finding that plaintiff has in fact collected the tax or license fee, from users of gasoline (motor vehicle fuel), under the statutes of Iowa, for the reasons:

1. There is no provision of the statutes of Iowa under which such collection can be made, or under which recovery can be had.

2. That there is no competent evidence in the record in this case from which the Court could find, as a matter of fact, that plaintiff had collected any such tax or license fee from the user or consumer of motor vehicle fuel.

Point XV.

That the Court erred in denying to the plaintiff the relief sought and dismissing its petition and not holding that the statutes of Iowa were unconstitutional on the ground of estoppel, for the reason that there are no facts upon which estoppel could be based in the record. That the Court erred in holding and finding as a fact that plaintiff received any benefits whatsoever under the statutes of Iowa. There is no competent evidence in the record from which the Court could find, as a matter of fact, that plaintiff collected any tax from the consumer or user or retailer of gasoline (motor vehicle fuel).

Point XVI.

The Court erred in not holding the statutes of Iowa above named, both as to the 1 cent tax or license fee, and the 2 cent tax or license fee, unconstitutional and void and contrary to the Constitution of Iowa, in that the statute levies a tax on all gasoline irrespective of the manner of its use, and when the tax is paid by the distributor, or paid by the plaintiff, MonaMotor Oil Company, that part of the act which refunds the tax or license fee on gasoline used for purposes other than the propulsion of motor vehicles on the highway, in that it taxes one class of persons, to-wit, distributors of gasoline (motor vehicle fuel), for the benefit of another class of persons, gasoline (motor vehicle fuel), for the benefit of another class of

persons, to-wit, the users of gasoline (motor vehicle fuel), for uses other than the propulsion of motor vehicles on the highway; and that such exemption is so inextricably a part of the whole act, that the whole act is unconstitutional and void for said reason, and the Court erred in not decreeing that said statutes were unconstitutional for said reasons, and in denying to the plaintiff the relief sought, and in dismissing its petition.

Point XVII.

That upon the record as a whole, the Court erred in dismissing the petition of the plaintiff on its merits, and in denying to the plaintiff the relief sought, and in denying a permanent injunction against the state officers, enjoining them from enforcing said statutes of Iowa as against this plaintiff.

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SUMMARY OF ARGUMENT.

I.

Appellant is entitled to equitable relief by injunction against Appellee.

1. Appellant has no adequate remedy at law for testing or resisting the Iowa Gasoline License Fee Statutes because resistance of, or noncompliance with the statutes subjects appellant to irreparable injuries at the hands of the state officials who have authority to cancel its license to do business, to impose severe fines and penalties upon it, and to fine and imprison its officers.

(NOTE: All statutes are set out in full in Appendix A.)
Code of Iowa, 1931—Section 5093-A4
Code of Iowa, 1931—Section 4755-B38.

Code of Iowa, 1931—Section 5093-C2.
Code of Iowa, 1931—Section 5093-A5.
Code of Iowa, 1931—Section 5093-A6.
Code of Iowa, 1931—Section 5093-A7.
Code of Iowa, 1931—Section 12894.
Code of Iowa, 1931—Section 12893.

Authorities:

Ex parte Young, 209 U. S. 123-157; 52 L. Ed. 714; 28 S. C. 441.
Philadelphia Co. vs. Stinson, 223 U. S. 605; 56 L. Ed. 570; 32 S. C. 340.
Truax v. Raich, 239 U. S. 33; 60 L. Ed. 131; 36 S. C. 7.
Public Service Co. v. Corby, 250 U. S. 153; 63 L. Ed. 905; 39 S. C. 440.
Western Union Tel. Co. v. Andrews, 216 U. S. 165; 54 L. Ed. 430; 30 S. C. 286.
Terrace v. Thompson, 263 U. S. 197; 68 L. Ed. 255; 44 S. C. 15.
Stafford v. Wallace, 258 U. S. 495-512; 66 L. Ed. 735; 42 S. C. 397.
Sterling v. Constanti, 287 U. S. 378-393; 77 L. Ed. 254; 53 S. C. 190.

2. The burden of the Iowa Gasoline License Fee Statutes falls upon the distributor entirely, and the distributor is the proper party to bring this action.

Code of Iowa, 1931—Sections above cited.

Authorities:

Central Transfer Co. v. Commercial Oil Co., 45 Fed. (2d) 400.
Pierce Oil Co. v. Hopkins, 282 Fed. 253.
Pierce Oil Co. v. Hopkins, 264 U. S. 137; 68 L. Ed. 593; 44 S. Ct. 251.

Anthony v. Kozer, 11 Fed. (2d) 641, 643.

Chicago Motor Club v. Kinney, (Ill.) 160 N. E. 163.

Williams vs. Riley, 280 U. S. 78; 74 L. Ed. 75; 50 S. Ct. 63.

People vs. Deep Rock Oil Corporation, (Ill.) 175 N. E. 572.

II.

The gasoline fees of Iowa are levied on the privilege of importing gasoline into the State of Iowa, and consequently are a direct infringement of appellant's constitutional rights secured by the United States Constitution, Article I, Sections 8, 9 and 10, and the 14th Amendment, Section I.

1. The license fees are levied as a condition precedent to the right to do an interstate business.

Code of Iowa, 1931—Section 4755-B38.

Code of Iowa, 1931—Section 5093-A1.

Code of Iowa, 1931—Section 5093-A2.

Code of Iowa, 1931—Section 5093-A4.

Code of Iowa, 1931—Section 5093-C2.

Code of Iowa, 1931—Section 5093-A5.

Code of Iowa, 1931—Section 5093-A7.

Authorities:

Furst v. Brewster, 282 U. S. 493; 75 L. Ed. 478; 41 S. C. 295.

Eureka Pipeline Co. v. Hallahan, 257 U. S. 265; 66 L. Ed. 227; 42 S. Ct. 101.

East Ohio Gas. Co. v. Tax Commission, 283 U. S. 465; 75 L. Ed. 1171; 51 S. Ct. 499.

Ozark Pipe Line v. Monier, 266 U. S. 555; 69 L. Ed. 439; 45 S. Ct. 184.

Alpha Cement Co. v. Massachusetts, 268 U. S. 203; 69 L. Ed. 916; 45 S. Ct. 477.

International Paper Co. v. Massachusetts, 246 U. S. 135; 62 L. Ed. 624; 38 S. Ct. 292.

Helson & Randolph v. Kentucky, 279 U. S. 245; 72 L. Ed. 683; 49 S. Ct. 279.

Pierce Oil Co. v. Hopkins, 264 U. S. 137; 68 L. Ed. 593; 44 S. Ct. 251.

Texas Company v. Brown, 258 U. S. 466; 66 L. Ed. 721; 42 S. Ct. 375.

Bowman v. Continental Oil Co., 256 U. S. 642; 65 L. Ed. 1139; 41 S. Ct. 606.

Askern v. Continental Oil Co., 252 U. S. 444; 64 L. Ed. 654; 40 S. Ct. 355.

Standard Oil Co. v. Graves, 249 U. S. 389; 63 L. Ed. 662; 39 S. Ct. 320.

Sonneborn Bros. v. Cureton, 262 U. S. 506; 67 L. Ed. 1095; 43 S. Ct. 643.

Brown v. Maryland, 7 U. S. 262; 6 L. Ed. 678; 25 U. S. 419; 12 Wheat. 419.

Pierce Oil Co. v. Hopkins, 282 Fed. 253.

Central Transfer Co. v. Commercial Oil Co., 45 Fed. (2d) 400.

2. The license fees discriminate against the importer of gasoline and in favor of the seller of gasoline manufactured, blended or compounded within the State.

Authorities:

Minneapolis Brewing Co. v. McGillvray, 101 Fed. 258.

State v. O'Leary, (Mont.) 115 Pac. 204.

State v. Sunburst Refining Co., (Mont.) 235 Pac. 428.

Sonneborn v. Cureton, 262 U. S. 506; 67 L. Ed. 1095; 43 S. Ct. 643.

Webber v. Virginia, 103 U. S. 344-350; 26 L. Ed. 565.

Tierman v. Rucker, 102 U. S. 123; 26 L. Ed. 103.

Welton vs. State of Missouri, 91 U. S. 275; 23 L. Ed. 347.
Guy v. Baltimore, 100 U. S. 434; 25 L. Ed. 753.
Walling v. Michigan, 116 U. S. 446; 29 L. Ed. 691; 68 S. Ct. 454.

3. The penalties of the statutes are so severe that they amount to a constraint against the appellant and deprive it of the equal protection of the laws and take its property without due process of law.

Authorities:

Ex parte Young, 209 U. S. 123-157; 52 L. Ed. 714; 28 S. Ct. 441.

4. The statutes creating the criminal penalties are not uniform in their operation. They grant to certain citizens or classes of citizens privileges and immunities which upon the same terms are not granted equally to all citizens.

Constitution of Iowa, Art. 1, Sec. 6.
Constitution of Iowa, Art. 3, Sec. 30.
Constitution of United States, Amendment, Art. 14 Sec. 1.
State of Iowa v. Garbroski, 111 Iowa 496, 28 N. W. 559.

5. The license fees are levied against the distributor. The officials of the State, in paying out of the fund created by the license fees, the amount of three cents per gallon to persons claiming exemptions because of non-use on the public road, are appropriating public funds for private purposes, collecting fees for other than public purposes, and consequently are depriving appellant of the equal protection of the laws and are taking appellant's property without due process of law.

Authorities:

Chicago Motor Club v. Kinney, (Ill.) 160 N. E. 163-167.

III.

The Gasoline Statutes of Iowa are null and void because they are too vague and indefinite to be capable of uniform enforcement.

1. It is a well settled rule so ancient as to entitle it to veneration, that statutes levying taxes should be construed most strongly against the government and in favor of the citizen. A tax which is too vague and indefinite to be capable of uniform enforcement, or which in a particular case depends for its enforcement upon the individual opinion and judgment of the tax officer as to liability of a person from whom the tax is sought to be collected, is null and void. A penal law which is of doubtful construction so that the tax officer must construe the law for himself as to its method of enforcement, is void. Such a law is deemed unworkable.

Authorities:

Fowler Lumber Co. v. Winslert, (Ga.) 149 S. E. 211.

Jones v. Bowman, 190 U. S. 127-141; 47 L. Ed. 979; 23 S. Ct. 678.

Davidson Bldg. Co. v. Mulock, 235 N. W. 45; 212 Iowa 730.

State v. West Side Ry. Co., 146 Mo. 155; 47 S. W. 959-961.

People v. Sweitzer, 266 Ill. 559; 107 N. E. 902-907.

State v. Board of State Canvassers, 259 Wis. 216; 150 N. W. 542.

IV.

The Statutes are mutually dependent and the invalidity of any part of any of these Statutes renders all of the statutes void.

Authorities:

Chicago Motor Club v. Kinney, (Ill.) 160 N. E. 163-169.

State v. Stanolind Pipe Line Co., (Iowa) 249 N. W. 366.

Connolly v. Union Sewer Pipe Co., 184 U. S. 540-565; 22 S. Ct. 431; 46 L. Ed. 679.

ARGUMENT.

Good government is the conduct of human affairs in an orderly manner. The United States Constitution prescribes that manner. Probably every citizen who insists on orderly taxation does so under the moral and legal condemnation of the tax authorities. There are citizens with the stamina and courage to assert their right to orderly taxation. If it were not for them and the protection of the courts, we would be governed entirely by the taxing bodies.

This appellant believes sincerely that the State of Iowa, in the enforcement of its gasoline license fee laws, has violated this appellant's privileges and immunities secured to it by the United States Constitution. This appellant appeals to this court to uphold its right to orderly government.

The Iowa gasoline license fee laws and their enforcement are unconstitutional in their application to this appellant upon the following general propositions:

A tax on imports as such violates the commerce clause. It is a burden on interstate commerce.

A tax on goods because of their origin in another state, and imported when no provision is made to tax similar goods in Iowa, is void.

A tax against importation, payment of which is a condition precedent to doing business in the state, is void.

A tax on gasoline purchased in another state, imported direct to a dealer in Iowa in original containers, is void.

A tax discriminating against the importer of gasoline and in favor of the seller of gasoline manufactured, blended or compounded within a state, is void.

A tax enactment containing penalties so severe that they amount to a constraint against the affected parties, is void.

A tax enactment appropriating funds collected from a distributor to pay to persons claiming exemptions appropriates public funds for private purposes and is void.

A tax enactment too vague and indefinite and discriminatory to be capable of uniform enforcement is wholly void.

The enforcement of payment of these taxes by statutory duress and penalties, criminal prosecutions, attachment, and the right to license made a condition precedent to payment of the tax, works irreparable injury and entitles this appellant to injunction.

MonaMotor Oil Company is a corporation duly organized and existing by virtue of the laws of Arizona

and at the time these controversies arose, had been duly licensed to do business in Iowa for many years and had been conducting an extensive business in Iowa, Nebraska, South Dakota, Minnesota and other states. This business has been continued pending the disposition of this controversy and is now being conducted in the usual manner with the exceptions stated here. One branch of the business is the importation and sale of gasoline. The imported gasoline is bought in Oklahoma and falls in different classes:

(a) Gasoline purchased outside of Iowa and shipped direct to a dealer in Iowa on his order, who is a customer of the Company. This delivery is made in original containers. This gasoline is designated as direct shipments. This class of business was carried on at all times during this controversy and is still carried on.

(b) Gasoline purchased outside of Iowa and shipped to MonaMotor Oil Company in tank cars, placed in bulk tanks of MonaMotor Oil Company in Iowa, and from these bulk and tank cars re-shipped to points in Iowa and points in other states. In Iowa the gasoline goes to the MonaMotor service stations and to other dealers. This class of business was in existence at all times during the controversies concerned here and is still in existence.

In addition to the importation of gasoline, the Company refined, manufactured and blended large quantities of gasoline from crude oil, casinghead gasoline and other products, at a refinery owned and operated by it located at Carter Lake, Iowa, a town directly west of Council Bluffs on the west side of the Missouri River. The refining, manufacturing and blending was carried on at this

point up to April, 1932 and the products were stored in bulk tanks there. Also at this point gasoline purchased outside of Iowa was imported and stored. The gasoline refined, manufactured and blended, and the gasoline imported were often mingled together in storage. The gasoline stored was moved to points in Nebraska and other states and some of it to other points in Iowa, by truck and tank car. A considerable amount of the gasoline moved by tank car was from the bulk plant at Carter Lake to the bulk plant at Council Bluffs.

The license fee statutes of which we complain require that a distributor, as a condition precedent to the right to do business, must obtain a distributor's license through the payment of a charge of one cent per gallon on all gasoline imported and used, and a charge of two cents per gallon on all gasoline used and disposed of. This payment is limited and prescribed on gasoline imported by the distributor. Failure to report and pay on imports subjects the dealer to cancellation of its license, heavy penalties, and the prosecution of its officers. Failure to pay these fees makes the distributor subject to a destruction under the penalties of the law of both its intrastate and interstate business.

The Company obtained the license and, for the privilege of doing business as a distributor, reported and paid the demands of the State up to the time of this controversy, having paid up to May 1, 1932 the sum of $461,699.83. During that time all gasoline moved from Carter Lake to other points in Iowa, whether refined, manufactured or blended at Carter Lake or not, was treated as imported gasoline by the State and a three

cent tax required against it. The tax also was required to be paid where the gasoline was shipped out of Iowa into other states. In April, 1932 auditors representing the Treasurer of the State of Iowa went upon the premises of the Company, examined the books and records and commenced to prepare an audit which was completed August 17, 1932. The auditors represented that they had found that during a period of about ten months immediately prior to April 1, 1932, the Company had failed to report forty cars of gasoline moved from Carter, Lake, Iowa to Council Bluffs, Iowa. Demand was made for the payment of $27,455.01. The Company denied that the audit was correct but, without granting it a hearing and without notice, the Treasurer of the State on October 14, 1932 cancelled the Company's license to do business, and notified the Company to cease doing business in the State. The Treasurer formerly had caused ten criminal charges for false reports to be filed against the Company and its officers jointly, and under these charges indictments were returned. The charges were dismissed later against the Company but pleas of guilty were entered by former officers who had resigned as officers of the Company. Suit was started on October 14, 1932 by the State Treasurer against the Company to recover the amount of taxes and penalties based on the audit, and a writ of attachment was issued against the Company's property.

The MonaMotor Oil Company was faced with irreparable damage to its business and property merely because it did not agree with the findings of the Treasurer's auditors and with this staring it in the face, filed this action to enjoin the State officials from destroying it,

The state continued to demand and exact the tax for April, May, June, July and August and September, 1932, when the license was cancelled and this suit was commenced.

I.

APPELLANT IS ENTITLED TO EQUITABLE RELIEF BY INJUNCTION AGAINST APPELLEES.

1. Appellant has no adequate remedy at law for testing or resisting the Iowa Gasoline License Fee Statutes because resistance of, or non-compliance with the statutes subjects appellant to irreparable injuries at the hands of the state officials who have authority to cancel its license to do business, to impose severe fines and penalties upon it, and to fine and imprison its officers.

The fines, penalties and prosecutions provided by the statutes are contained in Code of Iowa 1927, Chapter 251-A1, Sections 5093-A4, 5093-A5, 5093-A7, 5093-B1, and in Code of Iowa 1931, Section 4755-B38 and Sections 12893 and 12894. Under these statutes it is unlawful for any distributor to engage or continue in business without securing a license, and the license cannot be held unless the distributor pays the three cents per gallon license fee on all gasoline imported by him. The reports and remittances of the fees are to be made monthly. The reports also are required to be made on all gasoline imported in tank cars. If the distributor fails or refuses, for any reason, to remit the license fees on the due date, he is subjected to a penalty of ten per cent, which shall become immediately due and payable, and the Treasurer of the State is given immediate authority to revoke his license, and the license revoked may not be renewed unless the Treasurer of the State is satisfied that the ap-

plicant in the future will submit to all the requirements of the statutes. All individual distributors who in any manner violate these statutes are deemed giulty of a misdemeanor and upon conviction a fine of not less than one hundred dollars nor more than five hundred dollars is provided. If the distributor is a corporation, the statutes provide that each principal officer thereof is deemed guilty of a misdemeanor and is subjected to punishment for misdemeanors by imprisonment in the county jail not more than one year, or by a fine not exceeding five hundred dollars, or both the fine and imprisonment. No means is afforded by the statutes for the testing or questioning of the statutes in the courts. The individual distributor runs the risk of having his license to do business cancelled and of paying a fine. The corporate distributor who does not submit, runs the risk immediately of having its license to do business cancelled without hearing and its officers imprisoned and fined.

No action at law can protect the distributor who dissents. No action at law against the State or its officials can repair the destruction of its business by the cancellation of its license. No action at law against the State can protect the corporate distributor's officers from prosecution and imprisonment and fines. The corporate distributor must have the protection of the courts of equity. Otherwise it must submit to the demands of the State and it cannot assert its constitutional rights as the penalties are too severe for it to do otherwise.

In passing the gasoline license fee laws, the legislature of Iowa apparently sought to prevent any action to test the license fee statutes by distributors with courage

enough to do so, by placing heavy constraints and penalties as a condition on the right. The legislature of Iowa apparently had in mind the same result that the legislature of Minnesota had in the statutes tested before the United States Supreme Court in the case of *Ex parte Young*, 209 U. S. 123, 52 L. Ed. 714, 28 S. Ct. 441. In that case the State of Minnesota passed an act fixing two cents a mile as a maximum passenger rate to be charged by railroads in the State. For disobedience of the act, severe fines and penalties were imposed on the railroads and fines and imprisonment were imposed on their officers and agents. The penalties provided by the Minnesota legislature were closely analogous to the penalties provided in the Iowa statutes in question. In discussing the inadequacy of legal remedies in the state court, it was said:

> "To await proceedings against the company in a state court, grounded upon a disobedience of the act, and then, if necessary, obtain a review in this court by writ of error to the highest state court, would place the company in peril of large loss and its agents in great risk of fines and imprisonment if it should be finally determined that the act was valid."

In discussing the constraints placed upon the railroads by legislation of this nature, the court said:

> "The necessary effect and result of such legislation must be to preclude a resort to the courts (either state or Federal) for the purpose of testing its validity. The officers and employees could not be expected to disobey any of the provisions of the acts or orders at the risk of such fines and penalties being imposed upon them, in case the court should decide that the law was valid. The result would be a denial of any hearing to the company. The observations upon a similar question, made by Mr. Justice

Brewer in Cotting v. Kansas City Stock Yards Co. (Cotting v. Godard) 183 U. S. 79, 99, 100, 102, 46 L. Ed. 92, 105, 106, 22 Sup. Ct. Rep. 30, 38-40, are very apt: * * * 'But when the legislature in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws.' The question was not decided in that case, as it went off on another ground. We have the same question now before us, only the penalties are more severe in the way of fines, to which is added, in the case of officers, agents, or employees of the company, the risk of imprisonment for years as a common felon. See also Mercantile Trust Co. v. Texas & P. R. Co., 51 Fed. 529-543; Louisville & N. R. Co. v. McChord, 103 Fed. 216-223; Consolidated Gas Co. v. Mayer, 146 Fed. 150-153. In McGahey v. Virginia, 135 U. S. 662-694, 34 L. Ed. 304-314, 10 Sup. Ct. Rep. 972, it was held that to provide a different remedy to enforce a contract, which is unreasonable, and which imposes conditions not existing when the contract was made, was to offer no remedy; and when the remedy is so onerous and impracticable as to substantially give none at all, the law is invalid, although what is termed a remedy is in fact given. See also Bronson v. Kinzie, 1 How. 311, 317, 11 L. Ed. 143, 145; Seibert v. Lewis (Seibert v. United States) 122 U. S. 284, 30 L. Ed. 1161, 7 Sup. Ct. Rep. 1190. If the law be such as to make the decision of the legislature or of a commission conclusive as to the sufficiency of the rates, this court has held such a law to be unconstitutional. Chicago, M. & St. P. R. Co. v. Minnesota, supra. A law which indirectly accomplishes a like result by imposing such conditions upon the right to appeal for judicial relief as to work an abandonment of the right rather than face the

> conditions upon which it is offered or may be obtained is also unconstitutional. It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights."

The court then came to the conclusion that the plaintiff might have equitable relief in a federal court of equity. It said:

> "The various authorities we have referred to furnish ample justification for the assertion that individuals who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action."

The rights of Mona Motor Oil Company in this case are almost identical with the rights of the Railroad in the case of Ex Parte Young, and the constraints and liabilities to prosecution are very similar. The fact that a case is pending in the state court at law to collect a portion of these taxes which the company has refused to pay in order to assert its constitutional rights, does not divest appellant of its rights to equitable relief. The fact that the filing of a suit by the State to collect the tax did not deter the State Treasurer from cancelling the appellant's license is eloquent and conclusive testimony of this fact. This action is not an action to enjoin the state courts from trying the issues at law in an action to collect the taxes.

It is an action to enjoin the state officials from destroying appellant's business and prosecuting it under unconstitutional law and collecting unconstitutional taxes from it. If appellant should be relegated exclusively to the action at law in the state court, it would have to try that case by submitting to the closing down of its business and having its officers under the penalty of imprisonment and fines should appellant fail in its test of the license fee statutes. These principles are sustained also by the following authorities:

Philadelphia Co. v. Stimson, 223 U. S. 605; 56 L. Ed. 570;

Truax v. Raich, 239 U. S. 33; 60 L. Ed. 131;

Public Service Co. v. Corboy, 250 U. S. 153; 63 L. Ed. 905;

Stafford v. Wallace, 258 U. S. 495; 66 L. Ed. 735;

Terrace v. Thompson, 263 U. S. 197; 68 L. Ed. 255;

Sterling v. Constantin, 287 U. S. 378; 77 L. Ed. 375.

2. The burden of the Iowa gasoline license fee statutes falls upon the distributor entirely, and the distributor is the proper party to bring this action.

It is orderly at this point to call to the attention of this court a fundamental error of the lower court in that part of its opinion designated "EQUITABLE RELIEF." Upon a review of the cases of this court it will be apparent that the lower court based the whole of that section of its opinion and consequently a fundamental theory of its opinion upon a false hypothesis. The lower court said:

> "It is apparent that the distributors of gasoline in Iowa have uniformly, since the statutes were first

> enacted in 1927, collected the tax therein imposed from the ultimate consumer either before or after the tax was advanced by them to the State Treasurer. It is also apparent that the complainant in this case has not only been doing this, but it has collected under the statutes which it is now seeking to hold unconstitutional, the very taxes which it is refusing to pay to the State of Iowa.

This statement is the basis for what follows in the opinion and is in no manner borne out by the record or by the facts, and this conclusion cannot be reached by legal presumption.

To determine the falsity of this hypothesis will require some construction of the statutes and we do not wish, in this division, to go into detail in this respect. Some comment on the statutes will, however, be necessary to bring ourselves within the purview of the decided cases. Under the Iowa statutes the "license fee" is due from the user "unless previously paid." The statute reads:

> "Any person using gasoline within this State shall be liable for the fee (license) herein provided for unless the same shall have been previously paid."

It must follow that if the license fee has been paid previously, the user is not liable to anyone for it. Under Sections 5093-A4 and 5093-C2 the only license designated in the Act is that license to be obtained by the distributor, so that "license fee" must be construed in connection with that license. This construction is carried through into Section 5093-A5, where we find provision for reports on gasoline imported required of the distributor, the invoice gallonage of the container in which imported, provision for deduction of three per cent thereof, the report to be filed on or before the 20th of the month, and "at the same

time he shall remit to the Treasurer the amount of the license fee for such preceding month." If the distributor fails to report or pay the *license fee*, the Attorney General shall impose penalties, the Treasurer cancel distributor's license, the company be subjected to heavy fines under the criminal statutes, and its officers be subjected to fines and imprisonment.

All duties respecting license fees are directed against the distributor only, and all penalites, civil and criminal, are aimed solely at him. No duty rests on the user, nor is any criminal statute directed toward any act or omission on the part of the user.

No power or duty is given or delegated by the act to the distributor to collect the tax from the user or anyone else. If the sale be to another distributor or dealer and not to a user, the same situation confronts the distributor; he has no power to collect the license fee. More than that, no "license fee" falls on the user for which he is liable if it has been "previously paid."

We should not have to argue under such a state of facts and under such statutes that the lower court erred in stating that the distributors "collected the tax from the ultimate consumer." The lower court fell into a common error and one which has been repeatedly litigated and decided in each instance as an error by the decisions of this court and the decisions of the courts of the states. A review of the decided cases will establish the accuracy of this statement and the error of the lower court.

We realize that Section 5093-A3 provides that a person who sells at retail motor vehicle fuel must post a placard showing "total sale price per gallon including

license fee," but this has been determined universally to mean no more than to "inform the purchasing public that the dealer is paying a tax of two cents on each gallon of gasoline sold. Such provision and such notice cannot be construed as shifting the tax from the distributor to the consumer. * * *" This quotation is from the opinion in the case of *Central Transfer Co. v. Commercial Oil Co.*, 45 Fed. (2nd) at page 403. In view of the similarity of the statutes construed in that case and the statutes we are construing, it will be helpful to quote further from that opinion. The Missouri statute provided:

> "Every dealer shall for the year 1925, and each year thereafter, when engaged in such business in this state, pay to the state treasurer an amount equal to two cents for each gallon of motor vehicle fuels sold or distributed by such dealer in this state during such year."

In answering the question, Does the distributor collect this tax from the consumer, the court said:

> "Here in the instant case as already said, the tax is laid against the distributor and dealers only. It is a matter of no legal importance, so far as concerns the matter presently in hand, whether or not the distributors and dealers pass the tax on to the consumer. It may be conceded, as a matter known of all men, that those against whom the tax is directly laid do ordinarily pass it on to the consumer. But this is a matter, not of law, but of business practice. True it is that the Missouri Motor Fuel Law, in section 30 thereof, requires a notice to be posted by a distributor segregating the price of the gasoline from the amount of the tax. But this does not preclude the dealer from selling gasoline at any price he may see fit. In effect, such a notice merely informs the purchasing public that the dealer is paying a tax of two cents

on each gallon of gasoline sold. Such provision and such notice cannot be construed as shifting the tax from the distributor to the consumer, in the teeth of this statute. * * *" (The statute is set out above.)

For a distributor's license fee as in Iowa, the reasoning of the above quoted portion of this opinion is even stronger, and particularly, when the user is expressly made only liable when the tax is not previously paid by the distributor. The language of the court in the case of *Pierce Oil Co. v. Hopkins*, 282 Fed., on page 255, so well applies that we quote the following:

"It becomes necessary to ascertain the actual effect of the statute, whatever name or description has been applied to it by the state Supreme Court (Standard Oil Co. v. Graves, 249 U. S. 389, 394, 39 Sup. Ct. 320, 63 L. Ed. 662), in order to determine whether it violates the constitution of the United States. It is doubtless true that the amount of tax usually does fall finally upon the purchaser, because the seller will naturally fix a price or an amount to be collected for the commodities sold which will include the amount of the tax. Clark v. Titusville, 184 U. S. 329, 383, 22 Sup. Ct. 382, 46 L. Ed. 569. It may also be conceded that what is ultimately gained by the purchaser for the amount of tax so included is the use of the highways for automotive vehicles propelled by gasoline. In addition, there are some of the essential elements of a tax upon the sale, or the privilege of the sale of the gasoline. The seller is required to register and to file a report of his sales, and show therein 'the amount of tax due by said seller.' The seller must pay the tax, unless he collects the amount from the purchaser. While the first section requires the seller to collect one cent per gallon from the purchaser in addition to the usual charge therefor, no usual charge is fixed by statute, and the effect of the Act is to allow the seller to fix any price he wishes, and to require him

to pay one cent per gallon for the gasoline so sold. The penalties provided in the act are all levelled against the seller. The purchaser is not required to do anything by the Act although the result may incidentally cause an enhanced price for the gasoline.

"The conclusion that the tax is not levied against the purchaser disposes of the basis of the only contention made by appellant of a violation of the Fourteenth Amendment; but it may be added that the conclusion that the tax is an excise tax on the privilege of making sales of the named products, although measured by the gallons sold for a designated use, brings the act within the proper exercise of the state's power of taxation when the commerce clause is not involved."

This case was affirmed in 264 U S. 137, 68 L. Ed. 593; 44 S. Ct. 251.

In *Anthony v. Kozer*, 11 Fed. (2nd), at page 645, it is said:

"Nor is it demonstrable that the tax that the dealer is required to pay is an added expense to the purchaser, for his motor fuel, in the exact amount of the tax. It may or may not be, with the probability in favor of the negative. No one can say that the levy of the dealer's excise tax lifts the market price of motor fuel by just that amount, or in any amount, if it comes to that. It may be that the market price of the fuel is controlled by the importers into the state. But that, again, is controlled by competition among oil producers and refiners, and by supply and demand. Of course, local conditions enter more or less into the fixing of market value, one of which may be the imposition of a local excise tax, and it may be that importers, in responding to market prices, really absorb a portion of the tax; that is to say, the market price to the dealers may be less by reason of the tax than it would be otherwise. So that it cannot be said with confidence that motor oil costs the users more by exactly the amount of the tax than it would cost them

if the tax were not imposed, nor that the user pays more by the amount of the excise paid by the dealer for his motor fuel. The amount of the tax is therefore an unreliable standard as a toll against the driver of an automobile for the privilege of operating his car upon the highways."

The language of Thompson, J., in the case of *Chicago Motor Club v. Kinney*, (Illinois), 160 N. E. 163, so well applies that we quote the following:

"The business of marketing gasoline is a highly competitive business, and those engaged in it sell the same grade and quality of gasoline at different prices. The cost of production of gasoline varies so widely because of differences in the cost of drilling oil wells, quantity and quality of oil produced by a well, cost of refining, conveniences of transportation, methods of business and other conditions and items of cost too numerous to mention, that it does not control the price to the consumer. Into the cost of gasoline to the distributor, as defined in the act, must enter items of labor, transportation, taxes of every character, and many other items, and he must sell this gasoline in competition on the open market. Because of local conditions he may sell the same grade of gasoline in one community for one price and in another community for another price. A distributor in Illinois may absorb all of the tax imposed by the Motor Fuel Tax Act in one instance and a portion of it in another, and in still another instance he may pass on to the ultimate consumer the entire cost of this item. The proprietor of a garage, filling station, or curb pump who actually fills the fuel tank of the motor vehicle is not required to pay the tax of 2 cent per gallon on all fuel sold by him unless he is also an importer, producer, refiner or manufacturer of motor fuel, nor is he either required or authorized to collect from the consumer, as such, a tax of 2 cents a gallon on motor fuel to be used for any purpose. If he be a distributor

within the meaning of the act, he may or may not add to the price of gasoline sold by him the 2 cents which he has paid to the state, the same as he may or may not pass on to the same consumer the amount of tax he paid on his real or personal property used in the business. In short, the tax imposed by the Motor Fuel Tax Act is merely one of the items of cost to the distributor and it enters into the cost to the ultimate consumer just as any other item does. Therefore, if a consumer purchases his gasoline at a point in the state where competition is keen and the motor fuel tax is absorbed in whole or in part by the distributor or one or more of the dealers between the distributor and the ultimate consumer, and then receives from the state, in the nature of a refund, a payment of 2 cents on each gallon of motor fuel used by him for a purpose other than operating a motor vehicle on the highway of the state, he has received a gift from the public treasury in violation of Section 20 of Article 4 of our state constitution, and the distributor taxed for the purpose of raising the fund to provide this gift to the consumer has been deprived of his property without due process of law, in violation of the national and state Constitutions. * * * *

"Eliminating from the act the void sections 6, 7 and 10, we have an act which imposes a tax upon all distributors of all fuels suitable and practicable for operating motor vehicles, excepting kerosene, and places all of the fund thereby created in the special fund in the state treasury known as the road fund. No user of gasoline or other fuel suitable and practicable for operating motor vehicles would be exempted and none of the fund would be apportioned to the several counties of the state. Such an act is not the act that was passed by the General Assembly, and it is evident that the act would not have been passed without sections 6 and 10. Where the different objects of an act are so dependent upon or so mutually connected with each other in meaning or as conditions,

considerations or compensations for each other that it cannot be presumed the Legislature would have enacted the provisions designed to secure one of the objects without the provisions for the other, the invalidity of the latter renders the whole act void. People v. Martin, 178 Ill. 611, 53 N. E. 309; Springfield Gas & Electric Co. v. City of Springfield, 292 Ill. 236, 126 N. E. 739, 18 A. L. R. 929; Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 Sup. Cts. 431, 46 L. Ed. 679; Cooley on Const. Lim. (7th Ed.) p. 246."

In *Williams v. Riley*, 280 U. S. 78, 74 L. Ed. 175, 50 S. Ct. 63, in the opinion of Mr. Justice McReynolds, the same rule is applied.

In the light of the above cited and quoted decisions, it becomes clear that the lower court in the case at bar attempted to read something into the Iowa gasoline license fee statutes that cannot be found in them in order to support their constitutionality. In *Subdivision* 8, *at page* 198 *of the 3rd Federal Supplement Volume*, in its reported opinion the court says:

> "This provision in section 509-A5 is not as clear as it should be, but in the light of the other provisions of the statute, it is perfectly apparent that it was the intention of the Legislature that payment should be made on the 20th day of each month for all gasoline imported during the preceding month, unloaded and *to be used or consumed within the state of Iowa.* (Italics ours.) It is very apparent that the distributor may be required to pay some of the license fees in advance, based upon the report filed if he has not collected on all of the gasoline imported and unloaded by him during the preceding month."

This opinion was made in face of the fact that the provision that the distributor's report showed only the gasoline "to be used or disposed of within the state" was

repealed in 1927, and in face of the fact that, as a matter of law, the burden of this tax never shifts to the user and never is in fact collected from the user. The lower court refers to "apparent legislative intent," but this cannot be supported. In *Subdivision* 9 of the reported opinion the court stated:

> "That it was the intention of the Legislature to require of the distributor payment of the tax, but that it should not be a tax assessed against him but only as an administrative feature in the enforcement of the act, is clearly shown by an amendment to section 5093-A5 which was made by the 42nd General Assembly in 1927."

Then the court quoted the old and the new sections which we have set out. After this quotation the court said:

> "It is observed then that the Legislature took out of the original act the statement, 'and the total number of gallons of gasoline sold or otherwise disposed of,' and also the phrase, 'for which such distributor is liable.' It is perfectly apparent therefore that the purpose and intention of the Legislature was to omit from the act any statements therein that could in any wise be interpreted as an intention on their part to levy a tax on the gasoline sold or otherwise disposed of by the distributor and which might be construed as making the distributor primarily liable for the tax itself."

Again, we cannot follow logically the lower court's construction of "apparent legislative intent." The omission of original portions of the original act changed its whole meaning.

If it was the intention of the Legislature to make the distributor pay the license fee in the first instance, then it must of necessity be "previously paid" so far as a user

is concerned and in that event we have a tax for which no one is liable for its payment. It is true that a part of the original act repealed relieves the distributor of liability for the tax as a tax on gasoline and the duty of reporting the gasoline sold or otherwise disposed of, so that as a tax on property sold or used in the state, or an excise based on sale no longer could be claimed to exist as to the distributor, but the burden of a license fee remained. He could not remain in business without state license and he could not have the license without payment of the license fee, computed not on gasoline "sold or otherwise disposed of," but on invoiced gallonage of each container *imported,* less three per cent. Even the original act did not specify that the sale or disposition was to be for use in the state.

The lower court says that it was very apparent that the distributor was to be relieved of liability for the tax, yet by this method of relief, a greater burden than ever before, on the distributor, results. He must now pay on every gallon he imports regardless of use and where or when disposed of, as a condition precedent to his right to conduct the business of a distributor legally, and this result, the lower court says, is obtained by the "apparent intent to relieve him from liability" for the so-called tax. No provision is added to the act whereby the tax can be collected from the user, either by the state or the distributor. The officers of the state have never made any attempt to assert this tax against a user, and as a practical matter it is impossible to do so.

Why, then, the fiction of trying to say this is the user's tax? It is in fact just what the statute says it is:

a license fee, computed on the gasoline imported, charged against the distributor as a condition precedent to his right to do business in the state. Nor is the final conclusion of the court justified, wherein, on *page* 199, the lower court says:

> "Upon consideration of the entire act the intention of the Legislature is readily apparent: First, a levy is made upon all motor vehicle fuel used or consumed in the state; second, the person or persons using the fuel within the state are made liable for the payment of the fees; third, a refund is granted to users of such motor vehicle fuel other than users on the public highways; and, fourth, the distributor for the privilege of selling and dispensing of gasoline within the state of Iowa, is to be a toll collector and administer the collection of the tax making his reports as required by Section 5093-A5, and in either paying or advancing the tax on the 20th day of the month following that on which the gasoline was imported and unloaded by him."

This construction has been urged many times by the users of gasoline in interstate commerce under similar statutes, by the users of gasoline on federal highways whereby it would be deemed a toll, by cities and municipalities claiming exemption from taxation, and in every instance the acts are never construed as placing any burden on the user.

While some courts have placed upon the gasoline statutes the construction that the excise tax is upon the user of a motor vehicle on the highway measured by the gallons consumed at a fixed price per gallon, with provision for the distributor or dealer to collect the tax from the user, we find in every such act a direct provision for such a levy against the user and a direct provision for

burden of collection by the distributor or dealer from the user coupled with a duty to remit. The best illustration of the two forms of the statute is found in the decisions of the Supreme Court of Illinois, under which the first statute was almost identical in form with the present Iowa statute; the second was changed to lay the tax on use of the highway with a duty only on the dealer to collect. The first was declared unconstitutional; the second was found to be a proper method of taxation.

The first opinion is found in the case of *Chicago Motor Club v. Kinney*, (Ill.) 160 N. E. 163, supra. The provision of the act construed as laying the tax on the distributor is identical with the Iowa statute:

> "Section 4 requires those acting as distributors after July 31, 1927, to report to the department of finance on or before the 20th day of each calendar month the amount of motor fuel purchased, imported, produced, refined, compounded, manufactured, received, sold, distributed or used by them during the preceding calendar month and the amount on hand at the close of business for such month." Section 5 reads:
>
> "At the time of making the monthly return, the licensee shall pay as a license tax to the department of finance, two cents for each gallon of motor fuel sold or used by him during the period covered by the return. In making the computation of tax due, three per cent shall be deducted from the total amount of motor fuel sold or used by the licensee as allowance for evaporation and other loss."

Quoting further:

> "It is an occupation tax imposed on distributors of motor fuels as defined in the act."

The first act being declared unconstitutional as violating provisions of both State and Federal Constitutions and a second act was passed. This is construed in the case of *People v. Deep Rock Oil Corporation,* (Ill.) 175 N. E. 572. The act is set out as follows:

> "Section 2 (Smith-Hurd Rev. Stat. 1929, c. 120, s. 418) provides: 'A tax is hereby imposed on the privilege of operating motor vehicles upon the public highways of this state after July 31, 1929, at the rate of three cents per gallon of all motor fuel used in such motor vehicles upon such public highways.'"

The second act was declared valid. The direct levy of the tax for use of motor vehicles on the highways against the user, and the direct provision for collection by the distributor follows.

It seems to us that the lower court, in the case at bar, is attempting to do by construction that which the Legislature of Illinois was required to do by direct provision. We cannot believe the court has the broad power to legislate by judicial construction. In any event, the opinion runs counter to the decision of this court construing another statute almost identical with that of Iowa. We refer to the statutes of California in the case of *Williams v. Riley,* 280 U. S. 78, 74 L. Ed. 175; 50 S. Ct. 63. The California statute is referred to, and the following brief outline is given. Quoting:

> "By the Motor Vehicle Fuel Tax Statutes, Chap. 267, Act 1923, Chap. 359, Act 1925, and Chaps. 716, 795, Act 1927, the California Legislature defined motor vehicle fuel and directed that all distributors of it should be licensed and pay taxes to the Comptroller of the State, amounting to three cents per gallon sold, less an allowance of one per centum. These statutes

> further provide for reimbursing purchasers of fuel not used for operating vehicles upon public highways."

The same statement could be made of the Iowa statute.

Quoting further:

> "Appellants, along with thousands of other citizens and taxpayers of California, operate motor vehicles along the highways. They have procured, and must hereafter procure, the necessary fuel from licensed distributors at prices enhanced by the amount of the three cent tax."

The relief was denied the user of gasoline because no direct burden was placed upon him by such an act. The decision of this case should be controlling and decisive on this question.

The act of 1927 had one further provision. Section 8 provided for an inventory of all gasoline on hand or in storage at midnight April 1, 1927, upon which the license fee had not been paid, and the immediate remittance of the license fee thereon. This provision negatives any idea of an excise tax for use of a motor vehicle upon highways for which the user is liable and the distributor the collector. All gasoline on hand or in storage, no matter where or when it may be used, and regardless of how used, is made a basis for computation of this part of the license fee of the distributor, and again no provision is made for reimbursement from the user.

The conclusion inevitably follows that the Iowa gasoline license fee statutes are taxes on property in the hands of the distributor; that the distributor is solely the one responsible for the payment, and solely the one af-

fected by the enforcement of the laws, and that the distributor is the proper party to come into this court to get equitable relief.

II.

THE GASOLINE LICENSE FEES OF IOWA ARE LEVIED ON THE PRIVILEGE OF IMPORTING GASOLINE INTO THE STATE OF IOWA AND CONSEQUENTLY ARE A DIRECT INFRINGEMENT OF APPELLANT'S CONSTITUTIONAL RIGHTS SECURED BY THE UNITED STATES CONSTITUTION, ARTICLE I, SECTIONS 8, 9 AND 10, AND THE 14TH AMENDMENT, SECTION 1.

1. The license fees are levied as a condition precedent to the right to do an interstate business.

The statutes which we are challenging are made applicable to all distributors who bring gasoline into the state. Reports and payments are required by the statutes only on gasoline imported. Payment of the license fee on this gasoline immediately after it crosses the state border is required absolutely as a condition precedent to the distributor's right to do business, regardless of the fact that the gasoline may be en route to another state, regardless of the fact that the distributor may be sending the whole of it out into another state and regardless of the fact that the shipment may be a direct shipment from outside the state to a purchaser within the state on orders taken prior to shipment. The tax is not upon the gasoline as it comes to rest, but is on the privilege of the distributor to do business. Where the distributor is exporting the gasoline to another state, the license fee nevertheless must be paid by him. On this interstate business the license fee is levied indiscriminately on the distributor regardless of

interstate and intrastate business. MonaMotor Oil Company is a distributor conducting indiscriminately an interstate and intrastate business at the same stations and bulk plants, and the privilege of conducting these two lines of business is not subject to separation. The Iowa statutes make no provision for separation of the two classes of business. To conduct both classes of business it must have at all times a license, and as a condition to the privilege of conducting the business, it must pay a charge equal to three cents on the invoiced gallonage of each container, tank car, truck or other vehicle in which motor fuel is imported, less three per cent for shrinkage, regardless of when, where or how used or sold.

A distributor is defined as being one who brings gasoline into the state or who produces, refines, manufactures or compounds within the state any gasolines to be used within the state or sold or otherwise disposed of by him within the state for use in the state. In this definition, however, we find the only attempt at a limitation on the statutes. It is not made, however, a restriction on the application of the statutes as the remainder of the statutes applicable do not confine the payment of the license fees to gasoline sold for use within the state, but, on the contrary, require payment on the privilege of importing and disposing of gasoline, whether within or without the state. The conclusion is inescapable that this is a direct charge on the privilege of importing and of conducting an interstate business.

The Iowa taxes being license fees levied on the privilege of importing gasoline and on the privilege of conducting the business of a distributor, whether interstate

or intrastate, we fall squarely within the rule of the case of *Bowman v. Continental Oil Company*, 256 U. S. 642, 65 L. Ed. 1139. In that case it was shown that the plaintiff (Continental Oil Company) was engaged indiscriminately in intrastate and interstate commerce through the same stations and plants within the State of New Mexico. Its interstate commerce consisted of about 5.5% of its business which was conducted by making sales of petroleum products brought in from other states, in original barrels, packages or tank cars without breaking the packages, to consumers within the state. Its intrastate commerce consisted of about 94.5% of its business in making sales from broken packages, barrels and tank cars to consumers within the state. The State of New Mexico required the payment of an annual license fee of fifty dollars for each distributing station or place of business regardless of the type of commerce conducted there. The court held that the license tax applied to a privilege in which the interstate and intrastate elements were inseparable and that consequently the license tax constitated a burden on interstate commerce and was void. We quote pertinent sections from the opinion:

> "But with the license tax it is otherwise. If the statute is inseparable, then both by its terms and by its legal operation and effect this tax is imposed generally upon the entire business conducted, including interstate commerce as well as domestic; and the tax is void under the authority of Leloup v. Mobile, 127 U. S. 640, 647, 32 L. Ed. 311, 314, 3 Inters. Com. Rep. 134, 8 Sup. Ct. Rep. 1380; Crutcher v. Kentucky, 141 U. S. 47, 58, 59, 35 L. Ed. 649, 652, 653, 11 Sup. Ct. Rep. 851; Williams v. Talladega, 226 U. S. 404, 419, 57 L. Ed. 275, 281, 33 Sup. Ct. Rep. 116; and other cases of that character.

"Upon the questoin of severability, we are constrained to concur in the view adopted by the district court; and this notwithstanding our hesitation, in advance of a declaration by the court of last resort of the state, to adopt a construction bringing the law into conflict with the Federal Constitution. The act, in its 2nd section, requires every distributor of gasoline to pay an annual license tax of $50.00 for each distributing station or place of business or agency; requires it to be paid in advance; and renders it unlawful to carry on the business without having paid it. Section 8 declares that any person who shall engage or continue in the business of selling gasoline without a license shall be deemed guilty of a misdemeanor, and, upon conviction, be punished by fine or imprisonment, or both. The subject taxed is not in its nature divisible, as in the case of the excise tax. The imposition falls upon the entire business indiscriminately; and so does the prohibition against the further conduct of business without making the payment. By accepted canons of construction, the provisions of the act in respect of this tax are not capable of separation so as to confine them to domestic trade, leaving interstate commerce exempt. United States v. Reese, 92 U. S. 214, 221, 23 L. Ed. 563, 565; Trade-Mark Cases, 100 U. S. 82, 99, L. Ed. 550, 553; Poindexter v. Greenhow, 114 U. S. 270, 304, 305, 29 L. Ed. 185, 197, 198, 5 Sup. Ct. Rep. 903, 962; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 636, 39 L. Ed. 1108, 1125, 15 Sup. Ct. Rep. 912.

"No doubt the state might impose a license tax upon the distribution and sale of gasoline in domestic commerce if it did not make its payment a condition of carrying on interstate or foreign commerce. But the state has not done this by any act of legislation. Its executive and administrative officials have disavowed a purpose to exact payment of the license tax for the privilege of carrying on interstate commerce. But the difficulty is that, since plaintiff, so far as

appears, necessarily conducts its interstate and domestic commerce in gasoline indiscriminately at the same stations and by the same agencies, the license tax cannot be enforced at all without interfering with interstate commerce unless it be enforced otherwise than as prescribed by the statute,—that is to say, without authority of law. Hence, it cannot be enforced at all."

The court enjoined the state from collecting the license fee from the plaintiff. MonaMotor Oil Company is entitled to the same relief against the State of Iowa. In both states the imposition falls upon the entire business indiscriminately, and so does the prohibition against the further conduct of the business without making payment. The provisions of the act in respect to this tax are not capable of separation so that the license fee may be levied upon the privilege of doing only an intrastate business. MonaMotor Oil Company cannot continue to conduct its interstate business without paying the license fee based upon the full amount of gasoline imported regardless of its interstate or intrastate character.

The license fee statutes of Iowa expressly give the Treasurer authority to revoke the license of a distributor regardless of the fact that the business of the distributor might entirely be interstate commerce or might be interstate and intrastate indiscriminately. The Treasurer correctly construed these statutes when he attempted to stop the business of the MonaMotor Oil Company, regardless of the fact that much of it was interstate, when he issued the order in his letter of October 14, 1932, shown as Exhibit 9, in the Transcript of Record, which is as follows:

STATE OF IOWA, TREASURER OF STATE

Des Moines, Iowa

To MonaMotor Oil Company
Council Bluffs, Iowa.
E. B. Reeser, President;
H. M. Edinger, Vice President;
Clyde Fuller, Vice President:

This is to inform you that the license issued by this department in June, 1927, authorizing you to engage in business as a licensed distributor of gasoline in the state of Iowa, is hereby revoked, all according to law. From this date it shall be unlawful for you to continue or engage in the business of distributing motor vehicle fuel in the State of Iowa.

(Signed) R. E. JOHNSON,
Treasurer of State.

Dated October 14, 1932, at 1:30 P. M.

We desire to emphasize the fact that the order made by the State Treasurer under the provisions of the statutes, prohibits the MonaMotor Oil Company from continuing to engage in the business of distributing motor vehicle fuel in the State of Iowa, and makes it unlawful for it to continue in that business when it appears without conflict, that a vast portion of the business of distributing motor vehicle fuel referred to, is the distribution in interstate commerce.

An accurate criterion is a conclusive standard of construction set up by this court: *Is one engaged exclusively in interstate business subject to the charge? Could the company, by withdrawing from its intrastate business secure the exemption?* We have shown that the business of this company is such that there can be no practical separation of its intrastate and interstate business. Assume that we should discontinue all sales in Iowa, discon-

tinue all business except from the Carter Lake bulk plant, and distribute no gasoline from there except to Nebraska. The Company must obtain a license from Iowa. To keep that license it must report to Iowa the invoiced gallonage of every car imported, even though that car may be unloaded at Lincoln, Nebraska; must pay to Iowa three cents per gallon on invoiced gallonage of containers or forfeit its license and be subject to the penalties. It must pay because it imports, even though it conducts wholly an interstate business. But the state officers say, "We give you credit for all gasoline used in Nebraska." Where is the provision in the law for such a credit? It is not there. Is the giving of a credit equivalent to no collection of the tax? Does the giving of the credit rest on the whim of the officers? The burden is imposed with no lawful method of refund, and in the case at bar the state has and is retaining of such license fees collected, $6,194.01 as shown by the Peterson audit. We can see that the tax would be imposed on MonaMotor Oil Company even though it should be engaged exclusively in an interstate business and therefore the test announced by this court in the case of *East Ohio Gas Company v. Tax Commission*, 283 U. S. 465, 75 L. Ed. 1171, 515 Ct. 499, is conclusive:

> "And, while a state may require payment of an occupation tax by one engaged in both intrastate and interstate commerce, the exaction in order to be valid must be imposed solely on account of the intrastate business without enhancement because of the interstate business done, and it must appear that one engaged exclusively in interstate business would not be subject to the imposition and that the taxpayer could discontinue the intrastate business without withdrawing also from the interstate business. Sprout

v. South Bend, 277 U. S. 163, 170-171, and cases cited."

The construction placed by the Iowa Court on a very similar statute creating a so-called license fee computed on miles of pipe line maintained, charged as against a pipe line company as a condition precedent to its right to operate in Iowa, is of great importance in that their construction of the constitutionality of that statute should control, as applied to the license fees imposed by the motor vehicle fuel statutes with equal force and effect. That is the case of *State v. Stanolind Pipe Line Company*, 249 N. W. 366, decided June 20, 1933, in which Chief Justice Kindig says:

> "Sections 8338-d6 to 8448-d12 inclusive of said chapter require the appellee, as a condition precedent to transacting its pipe line business, to pay all costs and expenses of the proceedings leading up to the granting of the permit, together with a permit fee of $1.00 per mile for each inch of diameter of such pipe line located in the State of Iowa. * * *
>
> "Under the commerce clause of the United States Constitution a foreign corporation authorized by the state of its origin to engage in interstate commerce 'may not be prevented by another state from coming into its limits for all the legitimate purposes of such commerce.'
>
> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it.
>
> "Interstate commerce, in the face of the federal Constitution, cannot be burdened or restricted by the legislation of a state. Iowa, therefore, cannot require that the appellee must pay an annual license fee for

the right of carrying on interstate commerce in the state of Iowa.

"Regardless of this principle of police power, however, the state is never justified in going beyond the scope of such limited regulation, and in the face of the commerce clause of the federal Constitution, placing a burden upon and restricting interstate commerce. See cases first above cited under this proposition. While the Iowa Legislature may, under proper circumstances, have required the appellee to pay a license fee for the purpose of reasonable inspection and regulation under its police power, yet section 8338-d13 goes farther than that. In the case at bar, the state, through section 8338-d13 sought to require an annual license fee as a condition precedent to the right of the appellee to operate in the State of Iowa. Clearly, under the authorities cited, this section of the Iowa statute is unconstitutional and void because it conflicts with the commerce clause of the federal Constitution."

The only difference in the license fee in the case at bar, is that it is computed on gallons of gasoline imported; in the pipe line case, it is measured on the miles and diameter of pipe line operated. It would seem that this construction of such a license would be binding upon this court. The lower court did not have the benefit of this construction as the opinion was handed down after the case at bar was decided.

The principles expressed in the case of *Helson v. Kentucky*, 279 U. S. 245; 73 L. Ed. 683; 49 S. Ct. 279, are pertinent. The State of Kentucky endeavored to lay a tax which in its result interfered with interstate commerce by being levied on the privilege of transacting that commerce. In that case plaintiffs were engaged in operating a ferry boat on the Ohio River between Kentucky and Illinois, do-

ing an exclusively interstate business. Plaintiffs were citizens and residents of Illinois and all of their tangible personal property had a situs in that state. The ferry boat was operated by gasoline purchased and delivered in Illinois. About seventy-five per cent of the gasoline was consumed within the limits of Kentucky while making the interstate journeys. The tax in question was computed and imposed on the use of gasoline thus consumed. The Kentucky gasoline tax applied to persons who purchased gasoline without the state and used it within the state. This court held that the Kentucky tax was exacted as the price for the privilege of using an instrumentality of interstate commerce and that the tax burdened interstate commerce and consequently was unconstitutional. In discussing the principles involved, the court said:

> "A state cannot 'lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on.' Leloup v. Mobile, 127 U. S. 640, 648, 32 L. Ed. 311, 314, 2 Inters. Com. Rep. 134, 8 Sup. Ct. Rep. 1380; Lyng v. Michigan, 135 U. S. 161, 166, 34 L. Ed. 150, 153, 3 Inters. Com. Rep. 143, 10 Sup. Ct. Rep. 725; Ozark Pipe Line Corp. v. Monier, 266 U. S. 555, 562, 69 L. Ed. 439, 442, 45 Sup. Ct. Rep. 184. While a state has power to tax property having a situs within its limits, whether employed in interstate commerce or not, it cannot interfere with interstate commerce through the imposition of a tax which is, in effect, a tax for the privilege of transacting such commerce. Adams Exp. Co. v. Ohio State Auditor, 166 U. S. 185, 218, 41 L. Ed. 965, 976, 17 Sup. Ct. Rep. 604."

Gasoline was the commodity used for propelling the ferry boat in interstate commerce in the Kentucky case:—

Gasoline is the commodity used by appellant in carrying on its interstate business through its distributing agencies located in Iowa;—Gasoline is the commodity used by appellant in conducting its business of importing gasoline into the state of Iowa. The charge under the Iowa statute is based upon each gallon of gasoline so imported.

The effect of the Kentucky tax is the same as the effect of the Iowa tax—it results in a burden on interstate commerce measured by the gallons of gasoline used in the business. However, the Iowa tax is a more drastic violation of the Constitution than the Kentucky tax. In Kentucky the tax was laid only against the privilege of consuming the commodity in Kentucky; but in Iowa the tax is levied as a condition precedent to the right of the distributor to conduct its entire business, both intrastate and interstate, and it carries severe penalties and fines against the distributor, with fines and imprisonment against its officers, which penalties have been and are being asserted against this company and its officers.

There is one other case recently decided by the Supreme Court of the United States, which we deem controlling under the facts in this record. The case we refer to is the case of *Sonneborn Bros. v. Cureton*, 262 U. S. 506, 67 L. Ed. 1095, 43 S. Ct. 643. The record in the case at bar discloses without any conflict that the Treasurer of State cancelled the license of the company to do business based upon the facts disclosed by the Peterson audit. The stipulation of facts and the Peterson audit establish without any controversy the fact that the MonaMotor Oil Company was an importer of gasoline and as a vast part of its business so conducted in Iowa by it, sold gasoline to va-

rious distributors in Iowa upon their orders taken in Iowa, and the gasoline to fill such orders was shipped direct from Oklahoma to such distributors. The Peterson audit disclosed that in the past the license fee has been computed on over 600 cars of this class of gasoline, and that the State is now asserting a further charge by reason of the discrepancy between actual and invoice gallonage upon such 600 cars, as gasoline referred to as direct shipments. In addition, the Peterson audit disclosed that the State is seeking to recover a license fee based upon five additional cars of gasoline claimed to have been omitted from the former reports. Quoting from the Peterson audit, we find, "The term 'direct shipment' is used to indicate carload shipments of gasoline made from the oil fields direct to customers and dealers of the company." The fact that the charge imposed is computed upon the importation of this class of gasoline, and the payment of that charge is, under the statute, made a condition precedent to the right of the Mona Motor Oil Company to conduct its business of distributing gasoline in Iowa, brings the facts squarely within the rule of the case last cited. The rule to which we refer is stated on p. 515 of the opinion appearing in the official report, as follows:

> "Many of the sales by the appellants were made by them before the oil to fulfill the sales was sent to Texas. These were properly treated by the state authorities as exempt from state taxation. They were in effect contracts for the sale and delivery of the oil across state lines. The soliciting of orders for such sales is equally exempt. Such transactions are interstate commerce in its essence and any state tax upon it is a regulation of it and a burden upon it. Robbins v. Shelby County Taxing District, 120 U. S. 489; Asher v. Texas, 128 U. S. 129; Stoutenburgh v.

Hennick, 129 U. S. 141, 147; Caldwell v. North Carolina, 187 U. S. 622; Rearick v. Pennsylvania, 203 U. S. 507; Brennan v. Titusville, 153 U. S. 289; Dozier v. Alabama, 218 U. S. 124; Crenshaw v. Arkansas, 227 U. S. 389; Stewart v. Michigan, 232 U. S. 665; Western Oil Refining Co. v. Lipscomb, 244 U. S. 346."

There is one other class of gasoline that has been systematically used as a basis for the computation of a part of this license fee, and that is gasoline exported by the MonaMotor Oil Company to other states. The Peterson audit disclosed that 3c per gallon, less deduction of 3%, had been paid on 577,141 gallons of gasoline imported into Iowa, which was, by the MonaMotor Oil Company, exported to other states. The case last cited concedes the rule to be that the State can impose no burden upon interstate commerce business as applied to this class of gasoline.

The license fees are wholly and absolutely unconstitutional. The injunction should be granted.

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2. The license fees discriminate against the importer of gasoline and in favor of the seller of gasoline manufactured, blended or compounded within the state.

The entire license fees are laid against imports only. The statutes levying the two cents require reports and payment only on imported gasoline. The one cent license fee refers only to gasoline imported, and reports and payments are required to be made only on gasoline imported. There is no provision of the law by which the license fee can be computed on gasoline manufactured in Iowa. The acts of the officers in requiring reports and payments on manufactured gasoline are without authority in the law. There is no authority for their acts in requiring Mona-

Motor Oil Company to report and pay on gasoline manufactured in Iowa. Their actions in this respect are solely at their own whim and without legislative authority and sanction. The legislature directed that the tax be applied based wholly upon imports. At any time, at their will, the state officers may elect to abide by the requirement of the state statutes. The fact that they are not conforming to the requirements of the statutes is no defense to the officers of the state in this action.

At this time the record of this case show that the Coryell Company has been blending motor vehicle fuel in Iowa, has sold many thousands of gallons without paying the tax thereon, and is claiming an exemption because this motor vehicle fuel was not imported and consequently was not within the scope of the statutes. It is true that the state is seeking to collect from the Coryell Company taxes on this motor fuel, but there is no evidence that it has been able to do so or that its right to do so has been established by any court of final jurisdiction. This one instance alone is sufficient to show a discrimination in favor of the seller of gasoline manufactured, blended or compounded within the state.

Even though discrimination in favor of the Coryell Company was shown at the trial of the case at bar, that proof was made in excess of caution. It is sound law that the plaintiff does not have to show more than the statute to show discrimination.

The case of *Minneapolis Brewing Co. v. McGillivray*, (C. C. D. So. Dak.) 104 Fed. 258, correctly states the law as follows:

"It was objected at the argument that the bill of plaintiff was fatally defective in not alleging that there were persons engaged in the manufacture of malt or brewed liquors within the state of South Dakota, and selling the same at wholesale. This objection is not well taken. The question is not what is actually being done under a statute that determines its constitutionality, but what may be done under and by virtue of its provisions."

The facts in that case and the case at bar are very similar. Both deal with license fees based on imports as such. The rule is again expressed in the case of

State v. O'Leary, (Mont.), 115 Pac. 204:

"Neither is it any answer to say that the conditions assumed may not arise. They may arise, and the validity of a statute is not determined by what has been done under it, but by what may be done under it. This is a well recognized rule of constitutional law. 1 Lewis Sutherland on Statutory Construction, p. 107; Minneapolis Brewing Company v. McGillivray, (CC) 104 Fed. 258."

See also

State v. Sunburst Refining Co., (Mont.) 235 Pac. 431:

"In the brief of the Attorney General it is said that gasoline and distillate manufactured in this state have not been subjected to the successive taxes indicated in example 3 above. But it is no argument in favor of the law that the officers did not enforce it. The statute very clearly authorized such successive taxes, and the test is, not what has been done under it, but what may be done under it. State ex rel Holliday v. O'Leary, 43 Mont. 157, 115 Pac. 204."

It follows therefore that the statute itself works the discrimination. When any burden is placed on goods or their sale or the right to conduct the business of selling

or on their use because of their origin in another state, and no similar burden is placed on domestic goods, the discrimination thus shown vitiates the statute. The rule is stated by this court as follows:

In *Sonneborn Bros. v. Cureton*, 262 U. S. 506, on page 516 the court said:

> "A state tax upon merchandise brought in from another state or upon its sales, whether in original packages or not, after it has reached its destination and is in a state of rest, is lawful only when the tax is not discriminating in its incidence against the merchandise because of its origin in another state."

In *Webber v. Virginia*, 103 U. S. 344, on page 350 the court said:

> "* * * The agent for the sale of articles manufactured in other states must first obtain a license to sell, for which he is required to pay a specific tax for each county in which he sells or offers to sell them; while the agent for the sale of articles manufactured in the state, if acting for the manufacturer, is not required to obtain a license or pay any license tax. Here there is a clear discrimination in favor of home manufacturers and against the manufacturers of other states. Sales by manufacturers are chiefly effected through agents. A tax upon their agents when thus engaged is, therefore, a tax upon them, and if this is made to depend upon the foreign character of the articles, that is, upon their having been manufactured without the state, it is to that extent a regulation of commerce in the articles between the states. It matters not whether the tax be laid directly upon the articles sold or in the form of licenses for their sale. If by reason of their foreign character the state can impose a tax upon them or upon the persons through whom the sales are effected, the amount of the tax will be a matter resting in her discretion. She may place the tax at so high a figure as to exclude the

introduction of the foreign article and prevent competition with the home product. It was against legislation of this discriminating kind that the framers of the Constitution intended to guard when they vested in Congress the power to regulate commerce among the several states. * * * There would otherwise be no security against conflicting regulations of different states, each discriminating in favor of its own products and citizens and against the products and citizens of other states."

In *Tiernan v. Rucker*, 102 U. S. 123. Quoting syllabus:

"That act is inoperative only so far as it discriminates against imported wines or beer. A person cannot, for selling either of them, be subjected to a higher tax than that imposed for selling wines or beer manufactured in the state."

In *Guy v. Baltimore*, 100 U. S. 434. Quoting:

"A state cannot, in the exercising of her taxing power, impose upon the products of another state, brought within the limits for sale or use, a more onerous burden or tax than upon the like products of its own territory, nor discriminate against a citizen by reason of his being engaged in thus bringing or in selling them."

In *Walling v. Michigan*, 116 U. S. 446, on page 455 the court said:

"A discriminating tax imposed by a state operating to the disadvantage of the products of other states when introduced into the first mentioned state, is, in effect, a regulation in restraint of commerce among the states, and as such is a usurpation of the power conferred by the Constitution upon the Congress of the United States."

In *Welton v. State of Missouri*, 91 U. S. 275, on page 282, quoting:

> "* * * It is sufficient to hold now that the commercial power continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it, even after it has entered the state, from any burdens imposed by reason of its foreign origin. The act of Missouri encroaches upon this power in this respect and is therefore, in our judgment, unconstitutional and void."

Under the rule of the foregoing decisions the fact that this whole license fee is based and computed on imports only, with no such tax or license fee based on gasoline of domestic manufacturers, brings this case completely within the rule of the foregoing cases. The statutes thus imposing the burden on imports are void.

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3. The penalties of the statute are so severe that they amount to a constraint against the appellant and deprive it of the equal protection of the laws and take its property without due process of law.

In Section 5093-a5 of the Code of Iowa, 1931, Chapter 251-a1, a penalty of ten per cent for failure to pay the license fees on time is prescribed and the Treasurer of the State is authorized to revoke the license of the distributor for failure to make payment, for the rendering of false report, or for the failure to render the prescribed reports. Here we will quote Section 5093-a7 of the same statutes because the statute itself is the most eloquent testimony of the discrimination practiced and the heavy penalties involved:

> "5097-a7. MISDEMEANOR—PENALTY. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to the treasurer as herein prescribed, or

shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093-a4, 5093-a5 and 5093-b1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor. (41 G. A., ch. 6, g. 6; 42 G. A., ch. 248, g. 6)."

The punishment for misdemeanors is prescribed by Code of Iowa, 1931, Sections 12893 and 12894, which we here set out:

"12893. PROHIBITED ACTS—MISDEMEANORS. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor (C51, Par. 2675; R60, Par. 4302; C73, Par. 3966; C97, Par. 4905; C24, 27, Par. 12893).

"12894. PUNISHMENT FOR MISDEMEANORS. Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this state, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment (C51, Par. 2676; R60, Par. 4303; C73, Par. 3967; C97, Par. 4906; C24, 27, Par. 12894)."

A complete examination of the statutes which are shown in Appendix A of this brief discloses that no method of testing the constitutionality of the statutes is

allowed unless the party desiring to make the test wishes to submit itself to the ruin of its business by having its license cancelled pending the test, and wishes to subject itself to the penalties provided, and to subject its officers to prosecution, fines and imprisonment? If the distributor is an individual he is subjected only to a fine upon conviction.

This discrimination in the penalties against the corporate distributor on its face deprives the corporation of the equal protection of the laws secured to it by the United States Constitution. The operation of these discriminating penalties results in the deprivation of property of the corporation without due process of law.

The effect of penalties of this nature and severity is to intimidate and constrain the distributor from taking any action, either legal or equitable, in any court, either state or federal. The officers of the corporation could not be expected to question any of the provisions of the acts at the risk of fines and imprisonment being imposed upon them in case, after a legal test, these laws should be held valid. The distributor itself could not be expected to question any of the provisions of the acts at the risk of having its license to do business revoked and its entire business thus ruined. In the first part of the argument in this brief (Part I, Section 1), the opinion of the court and the language quoted in *Ex Parte Young*, 209 U. S. 123, 52 L. Ed. 714, 28 S. Ct. 441, is directly in point and again we refer to that opinion. There it was held that the effect of such legislation was to deprive the corporation of the equal protection of the laws and to take its property without due process of law.

4. The statutes creating the criminal penalties are not uniform in their operation. They grant to certain citizens or classes of citizens privileges and immunities which upon the same terms are not granted equally to all citizens.

There is a further reason why Section 5093-a7 of the Code of 1931, which creates penalties of a criminal nature for failure to do those things provided for by this Chapter 251-A1, in that said section of the act is a violation of the Constitution of Iowa and of the United States.

The Constitution of Iowa provides:

Art. 1, Sec. 6:

"Laws uniform. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."

Art. 3, Sec. 30:

"Local or special laws—general and uniform—boundaries of counties. The General Assembly shall not pass local or special laws in the following cases:

"For the assessment and collection of taxes for state, county or road purposes;

"For laying out, opening and working roads or highways;

"For changing the names of persons;

"For the incorporation of cities and towns;

"For vacating roads, town plats, streets, alleys or public squares.

"For locating or changing county seats.

"In all the cases as above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state; and no law changing the

boundary line of any county shall have effect until, upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it."

The Constitution of the United States, Amend. Art. 14, Sec. 1, is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make nor enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of its law."

Section 5093-a7 is not uniform in its operation. It applies only to a special class of persons, to-wit, a distributor, a railroad, a transportation company, or agent of railroad or transportation company, and to those only. This class distinction is wholly arbitrary and unjust and without reason therefor.

If the user of gasoline can be deemed liable for the tax when not previously paid, there is every reason to make such user equally amenable to the punishments provided for in this criminal statute. But such user is in no manner made subject to the provision of this act.

However, a more serious difficulty arises, due to the fact that the law is not uniform in its operation as applied to the class provided for therein. Two separate and distinct penalties are provided for the violation, in that the agent of a distributor corporation may be subjected to a fine of $500 and imprisoned for one year in

the county jail, while the agent of a distributor, or a distributor who is not a corporation can only be subjected to a fine of not less than $100, with no corresponding provision for imprisonment.

Many other inconsistencies may be cited in the operation of this statute whereby one class of persons would be subjected to one penalty, and another class or their agents be subjected to an entirely different penalty for doing the same act in the same way. We should need no further statement or argument to determine that the criminal statute directly violates the provisions of both the Constitution of Iowa and of the United States. As construing Article 1, Section 6, of the Iowa Constitution, and the equal protection clause of the 14th Amendment to the United States Constitution, we call attention to *State of Iowa v. Garbroski*, 111 Iowa 496, 28 N. W. 559. Quoting:

> "'ALL laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which upon the same terms shall not equally belong to all citizens.' That this statute grants a privilege to persons who have served in the Union army and navy, not available to others, is manifest. It is the privilege of plying the vocation of peddling outside of cities and towns without the payment of the annual tax exacted from others. This is not dependent on a present situation or condition, nor in relation or circumstances suggesting the necessity or propriety of different legislation for the exempted class. The authorities generally recognize that, for the purposes of efficient and beneficial legislation, it is often necessary to divide the subjects upon which it operates into classes. As said by Justice Field, in Railway Co. v. Mackey, 127 U. S. 205 (8 S. Ct. Rep. 1161, 32 L. Ed. 107). 'The greater

part of all legislation is special, either in the objects sought to be obtained by it, or in the extent of its application.' The extent to which division may be carried without running into special, or what is known as 'class' legislation, is sometimes difficult to determine. All the authorities agree that the distinction in dividing may not be arbitrary, and must be based on differences which are apparent and reasonable. Thus, the Supreme Court of Minnesota, in Nichols v. Walter, 37 Minn. 262 (33 N. W. 890), declared: 'The true, practical limitation of the legislative power to classify is that the classification shall be upon some apparent natural reason, some reason suggested by necessity; by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them.' This was approved in Layalle v. Railway Co., 40 Minn. 249 (41 N. W. 974). In Johnson v. Railway Co., 43 Minn. 222 (45 N. W. 157, 8 L. R. A. 419), the same court, through Mitchell, J., said: 'It has sometimes been loosely stated that special legislation is not class, if all persons brought under its influence are treated alike under the same conditions. But this is only half the truth. Not only must it treat alike, under the same conditions, all who are brought within its influence, but in its classification it must bring within its influence all who are under the same conditions.' In State v. Hammer, 42 N. J. 439, the supreme court of New Jersey held that: 'The true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as a basis of classification must be of such nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be a substantial distinction, having reference to the subject-matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction on which the classification is

founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.' The Supreme Court of Tennessee, in Sutton v. State, 96 Tenn. 696 (36 S. W. 697, 33 L. R. A. 589), very tersely states the law to be that legislation, to be constitutional and valid, 'must possess each of two indispensable qualities: First, it must be so formed as to extend to and embrace equally all persons who are or may be in the like situation or circumstances; and secondly, the classification must be natural and reasonable and not arbitrary or capricious.' To the same effect, see State v. Loomis, 115 Mo. 307, (228 S. W. 359, 21 L. R. A. 789); State v. Haun, 61 Kan. 146, (59 Pac. 341); State v. Goodwill, 33 W. Vir. 179 (10 S. E. 286, 6 L. R. A. 621); Ex parte Jentzach, 112 Cal. 486 (44 Pac. 803, 32 L. R. A. 665); City of Evansville v. State, 118 Ind. Sup. 426 (21 N. E. 267, 4 L. R. A. 93); Magoun v. Bank, 170 U. S. 283 (18 Sup. Ct. 594, 42 L. Ed. 1037). In the last case Justice McKenna, speaking of the equal protection of the laws required by the fourteenth amendment to the Constitution of the United States, said: 'It does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed.' The same court speaking through Justice Brewer, in Railway Co. v. Ellis, 165 U. S. 150 (17 Supp. Ct. 255, 41 L. Ed. 666), declared that 'the differences which will support class legislation must be of such as in the nature of things furnish a reasonable basis for separate laws and regulations.'"

5. The license fee is levied against the distributor. The officials of the state, in paying out of the fund created by the license fees the amount of 3c per gallon to persons claiming exemptions because of non-use on the public roads, are appropriating public funds for private purposes, collecting fees for other than public purposes, and consequently are depriving appellant of the equal protection of the laws and are taking appellant's property without due process of law.

In the first part of this Brief we have shown conclusively that the license fees are levied exclusively against the distributor. Under the statutes the state has provided that a user of gasoline for purposes other than propelling a motor vehicle on the public roads may claim a "refund" of 3c per gallon on all gasoline which he has purchased. He is allowed this so-called "refund" although he does not pay the tax and is not liable for it.

In paying the license fees the distributor is required to pay fees based on 3c per gallon on all gasoline imported by him, less a deduction of 3% for evaporation and loss. The one claiming a refund has no such deduction made out of the amount he is refunded. In consequence, the one getting the refund receives from the state an amount greater than the amount of taxes paid by the distributor, computed on the same gasoline.

For example, a farmer purchases 200 gallons of gasoline from a distributor for use in his farm machinery, and the farmer claims and gets a refund from the state amounting to $6.00. On the same gasoline the distributor is required to pay to the state as a license fee the amount of 3c per gallon on 200 gallons, less a deduction of 3%, the state thereby getting from the distributor the sum of $5.82. The remaining sum of 18c must come from some

source. Since there is no provision that the tax representing this amount shall be collected on the gallons of gasoline claimed to be exempt, the state goes to the general fund created by the gasoline license fees, and deducts the money. The small figures have been used for the purpose of clarity and convenience. Since the refund provision of the statute the state has made refunds amounting to $6,423,550.79 from April 1925 to December 1932, inclusive. The appellant has contributed over a half million dollars to the fund out of which this refund is made. Of this amount, 3% or $192,706.52 has in the past been refunded in excess of the amount of taxes actually collected. The distributors of gasoline have been forced to pay this to create a fund to pay out this unwarranted amount. They have been deprived of their property without due process of law in order that this refund may be made.

We call attention of the Court to the case of *Chicago Motor Club v. Kinney*, (Ill.), 160 N. E. 163. The language of the court in declaring the Illinois law unconstitutional, under an identical state of facts, is now presented to this Court as controlling:

> "We come now to the consideration of the validity of section 10 of the Motor Fuel Tax Act, which is challenged on the ground that it makes a gift of public funds to 'any person who uses motor fuel (upon which the license tax imposed by this act has been paid) for any purpose other than operating a motor vehicle upon the public highways of this state.' It is elementary that taxes can be levied for public purposes only (1 Cooley on Taxation (4th Ed.) Sec. 174; Citizens Savings & Loan Ass'n v. Topeka, 20 Wall. 655, 22 L. Ed. 455; Lowell v. City of Boston, 111 Mass. 454, 15 Am. Rep. 39), and that public funds cannot be appropriated to any private purpose (Washingtonian Home v. City of Chicago, 157 Ill. 414, 41 N. E. 893, 29 L. R.

A. 798; Deering & Co. v. Peterson, 75 Minn. 118, 74 N. W. 568). It is a violation of the due process of law clause of the national and state Constitutions to take a citizen's money from him under the guise of taxes for any other than a public purpose. Robbins v. Kadyk, 312 Ill. 200, 143 N. E. 863; Green v. Frazier, 253 U. S. 233, 40 S. Ct. 499, 64 L. Ed. 878; Water Co. v. Wade, 59 N. J. Law 78, 35 A. 4. There can be no question about the law on this subject, but it is not always easy to draw the line in all cases so as to decide what is a public purpose and what is not. Section 10 of the act in question requires the department of finance to pay to any person who uses motor fuel for any other purpose than operating a motor vehicle upon the highways of the state and upon which the license tax imposed by the act has been paid, 2 cents on each gallon of motor fuel so used, without regard to whether such person has paid the tax himself and without regard to whether he has paid into the state treasury, directly or indirectly, a sum equal to 2 cents on each gallon of motor fuel so used by him. If this be the effect of section 10, then it clearly contravenes section 20 of article 4 and section 2 of article 2 of our state Constitution and the Fourteenth Amendment to the national Constitution.

"The act under consideration does not purpose to levy a tax upon the consumer of motor fuels. It does not require the person who uses motor fuel for the purpose of operating a motor vehicle upon the highways of this state to pay a tax of 2 cents on each gallon of motor fuel so used, nor does it require the distributor of such motor fuel to collect such a tax. The tax is levied against 'a person who for sale or use in this state either imports into this state or produces, refines, compounds or manufactures in this state motor fuel.' The only person entitled to a refund under section 10 who is required by the act to pay the tax is one who imports motor fuel into this state or who produces, refines, compounds or manufactures motor fuel in this state. Such a person is

not required to pay a tax of 2 cents for each gallon of motor fuel sold or used by him, but he is required by section 5 to pay such a tax on the amount of motor fuel so sold or used, less 3 per cent of the amount. To illustrate: If a contractor engaged in the building of hard surfaced roads in this state requires a large quantity of gasoline to be used in the operation of his trucks, tractors and other motors, and imports into this state a tank car of gasoline containing 10,000 gallons, and uses the same for purposes other than the operation of a motor vehicle upon the public highways of the state, he would be entitled to a refund of $200 from the state under section 10, but he would have paid into the state treasury only $194. Thus he would receive from the state treasury for his private use and benefit $6 which he had not paid into the treasury."

* * * * * *

"Therefore, if a consumer purchases his gasoline at a point in the state where competition is keen and the motor fuel tax is absorbed in whole or in part by the distributor or one or more of the dealers between the distributor and the ultimate consumer, and then receives from the state, in the nature of a refund, a payment of 2 cents on each gallon of motor fuel used by him for a purpose other than operating a motor vehicle upon the highways of the state, he has received a gift from the public treasury in violation of section 10 of article 4 of our state Constitution, and the distributor taxed for the purpose of raising the fund to provide this gift to the consumer has been deprived of his property without due process of law, in violation of the national and state Constitutions."

The "refund" to persons claiming exemptions under the statutes, who have not paid the tax in the first instance, out of a fund collected from appellant, a distributor, and other distributors, constitutes a diversion of public funds for other than public purposes and constitutes a depriva-

tion of the property of appellant without due process of law. The "refund" to persons claiming exemptions on an amount 3% in excess of the license fees paid by appellant and other distributors upon the same gasoline, and the making up of this deficiency from a fund for which the appellant and other distributors are taxed, constitutes a deprivation of appellant's property without due process of law.

III.

THE GASOLINE LICENSE STATUTES OF IOWA ARE NULL AND VOID BECAUSE THEY ARE TOO VAGUE AND INDEFINITE TO BE CAPABLE OF UNIFORM ENFORCEMENT.

1. It is a well settled rule so ancient as to entitle it to veneration, that statutes levying taxes should be construed most strongly against the government and in favor of the citizen. A tax which is too vague and indefinite to be capable of uniform enforcement, or where the enforcement in a particular case depends upon the individual opinion and judgment of the tax officer as to liability of a person from whom the tax is sought to be collected, is null and void. A penal law which is of doubtful construction so that the tax officer must construe the law for himself as to its method of enforcement, is void. Such a law is deemed unworkable.

The rule is well stated in the language of the Court in the following case:

Davidson Bldg. Co. v. Mulock, Mayor, et al., (Ia.) 235 N. W. 45. At page 54 the Court said:

> "It is apparent that the legislature, by sections 28, 29, and 30 of Chapter 205, Acts of the 43rd General Assembly, attempted to provide a new course of procedure for appeals from the action of the board of review, attempting to provide for an appeal from said board to the county board of review, and from the

latter board to the district court. The appellant contends that the provisions of said sections are incomplete, and so vague, defective, indefinite and uncertain as to be unworkable or incapable of enforcement, and therefore void, and that by reason thereof, its appeal from the action of the board of review to the district court is the correct method of appeal under the only existing law. It is apparent that appellant is right in its contention provided the amendments hereinbefore mentioned are void by reason of unworkability. The question presented is, Are said sections of Chapter 205, Acts of the 43rd General Assembly, void? While it is the duty of the courts, if possible, to ascertain the meaning of and give effect to legislative enactments, yet, if a statute is so vague, incomplete, defective, indefinite, or so conflicting or inconsistent as to be unworkable or incapable of enforcement, it then becomes the duty of the courts to declare it inoperative and void, and the remedy lies in future legislative enactment, and not by adding to or filling up the gaps in the defective legislation by judicial legislation. See Midwest Hotel Co. v. State Board of Equalization, 39 Wyo. 461, 273 P. 696; State v. Board of Canvassers, 159 Wis. 216, 150 N. W. 542, Ann. Cas. 1916D, 159; State v. West Side St. Ry. Co., 146 Mo. 155, 47 S. W. 959; People v. Sweitzer, 266 Ill. 459, 107 N. E. 902, Ann. Cas. 1916B, 586; State v. Partlow, 91 N. C. 550, 49 Am. Rep. 652; Standard Oil Co. v. State, 178 Ala. 400, 50 So. 667; In re Hendricks, 60 Kan. 796, 57 P. 965; Sutton v. Rose, 224 Ky. 156, 5 S. W. (2d) 892; People v. Emmerson, 325 Ill. 357, 156 N. E. 474, 475; Hettinger v. Good Road Dist. No. 1 of Washington County, 11 Idaho 313, 113 P. 721; Litteral v. Blair, 139 Ky. 196, 129 S. W. 573, 575; Knight v. Trigg, 16 Idaho 256, 100 P. 1060; Ex parte Lucas, 161 Ark. 180, 255 S. W. 870; Railroad Commission of Indiana v. Grand Trunk Western Ry. Co., 179 Ind. 255, 100 N. E. 852; In re Di Torio (D. C.) 8 F. (2d) 279. In Midwest Hotel v. State Board of Equalization, 39 Wyo. 461, the Court declared:

> 'To supply omitted material in a statute is often one of the most delicate and difficult tasks which can fall to the lot of the court of last resort. It is quite true that courts should endeavor by every rule of construction to ascertain the meaning of, and give effect to, each enactment of the legislature. It is equally axiomatic under our system of government that courts may not legislate. We think, therefore, that it is deducible, both logically and from the current of authority that when a statute has been left by the law making power unfinished, and so indefinite and uncertain as to be incapable of enforcement, there remains nothing for the courts to do but to declare it void.'

"In State v. West Side Ry. Co., 146 Mo. 155, 47 S. W. 959, 961, the court said:

> 'The courts cannot venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a co-ordinate branch of the government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however desirable they may be, than for judicial tribunals to transcend the just limits of their constitutional powers.'

In *People v. Sweitzer,* 266 Ill. 459, 107 N. E. 902, 907, Ann Cas. 1916B, 586, the Court used the following apt language:

> "An act is void where its language appears, on its face, to have a meaning, but it is impossible to give it any precise or intelligible application in the circumstances under which it was intended to operate."

In *State v. Board of State Canvassers,* 159 Wis. 216, 150 N. W. 542, 546 Ann. Cas. 1916D, 159, the Court made the following pronouncement:

"If the enactment is so uncertain that the Court is unable to determine, with any reasonable degree of certainty, what the legislature intended, or it is so incomplete that it cannot be executed, there is no other course open but to condemn it as void for uncertainty, as this court has done on other occasions, and other courts have done so often that the duty in that regard has become a matter of unwritten law. * * * * An intent, however manifest, not discovered in the law and capable of being vitalized, within the scope of it and fundamental restraints, must fail. As said by Lord Campbell in Coe v. Lawrence, 1 El. & B. 516, and often approved by this and other courts: 'I really cannot doubt what the legislature intended to do; but they have not carried it into effect. * * * It is better that we should adhere to the words they have used, than that we should strive to amend it.'"

IV.

THE STATUTES ARE MUTUALLY DEPENDENT AND THE INVALIDITY OF ANY PART OF ANY OF THESE STATUTES RENDERS ALL OF THE STATUTES VOID.

Chapter 251-A1 of the Code and Section 4755-b38 apply as a whole to one object. That object might be stated as the establishment of a charge or license fee, based upon gasoline imported and used, and gasoline used and disposed of, with mutually dependent provisions for the payment of such license fee by computation based upon report of gallonage of imported gasoline in the original containers in which imported, together with the mutually connected provisions as to punishment for failure to pay or report for civil penalties, and with the further mutually dependent provisions as to refunds and disbursements from this fund. The statutes and each section thereof are so clearly, mutually connected, and dependent

on each other section in meaning and in considerations, that it cannot be assumed that the Legislature of Iowa would have passed any section except as in relation to the other sections of the act on which it is mutually dependent. And it follows that the validity of any of the sections heretofore referred to, will, as a matter of course relate to and create illegality in all sections mutually dependent thereon.

This rule is established and well stated in the case of *Chicago Motor Club v. Kinney*, (Ill.) 160 N. E. 163-169. Quoting from page 169:

> "Where the different objects of an act are so dependent upon or so mutually connected with each other in meaning or as conditions, considerations or compensations for each other that it cannot be presumed the Legislature would have enacted the provisions designated to secure one of the objects without the provision for the other, the invalidity of the latter renders the whole act void. People v. Martin, 178 Ill. 611, 53 N. E. 309; Springfield Gas & Electric Co. v. City of Springfield, 292 Ill. 236, 126 N. E. 739, 18 A. L. R. 929; Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679; Cooley on Const. Lim. (7th Ed.) p. 246.

The same rule has been adopted by the United States Supreme Court and is effectively stated in the case of *Conolly v. Union Sewer Pipe Co.*, 184 U. S. 540-565, 22 S. Ct. 431, 46 L. Ed. 679, as follows:

> "The principles applicable to such a question are well settled by the adjudications of this court. If different sections of a statute are independent of each other, that which is unconstitutional may be disregarded, and valid sections may stand and be enforced. But if an obnoxious section is of such import that the

other sections without it would cause results not contemplated or desired by the legislature, then the entire statute must be held inoperative."

The same rule was adopted and established by the Iowa Supreme Court in its construction of the related statutes in the case of

State v. Stanolind Pipe Line Co., (Iowa) 249 N. W. 366.

This is a general rule of statutory construction universally adopted.

CONCLUSION.

MonaMotor Oil Company appeals to this court to protect and preserve its right to orderly taxation. It appeals to this court for protection against the unwarranted, unauthorized and discriminatory actions of the officials of the state of Iowa in their administration of unfair and unconstitutional laws.

We submit respectfully to this court that the statutes of Iowa, and the state officials in their enforcement, have laid upon this appellant a tax upon goods because of their origin in another state, a tax upon goods because of their importation the payment of which is made a condition precedent to doing business in the state, a tax upon goods purchased in another state imported direct to dealers in Iowa in original containers on orders taken in Iowa, a tax discriminating against the importer and in favor of the seller of gasoline manufactured, blended or compounded within the state, a tax enactment contain-

ing penalties so severe that they amount to a constraint against appellant, a tax enactment appropriating funds collected from a distributor to pay to persons who have not paid the tax and who are claiming exemptions, a tax enactment that is too vague and indefinite and discriminatory to be capable of uniform enforcement, a tax enactment discriminatory in the criminal penalties it involves. We submit to this court respectfully that if there be any right to the preservation of constitutional privileges violated by tax enactments of the nature we have described, this appellant has those constitutional rights and is entitled to the protection of this court.

The State of Iowa should be required, along with the other states of the Union, to confine within the limits of the United States Constitution its tax laws. Its remedy is simple:—A constitutional gasoline tax law. It is no great hardship to require the state to pass such a law. Since the state has chosen not to comply with the requirements of the United States Constitution, it is a more just thing to inform the state of its errors and the necessity for proper legislation so that its needs for revenue through the taxing of gasoline shall be satisfied in a constitutional manner. No bond issue of the state, and no commitment of the state, is involved. The proper remedy lies with the state legislature and a resort to such legislative remedy can work no serious harship to anyone. The injunction should be granted.

We respectfully pray that this court reverse the decision of the lower court and direct it to render judgment in favor of this appellant, granting to it the equitable relief which it seeks.

Respectfully submitted,

GEORGE S. WRIGHT,
ADDISON G. KISTLE,
PAUL E. ROADIFER,
of Council Bluffs, Iowa, and
M. D. KIRK,
of Tulsa, Oklahoma,
Counsel for Appellant.

APPENDIX.

The Original Act as First Adopted.

LAWS OF THE FORTY-FIRST GENERAL ASSEMBLY.

Chapter 6.

S. F. 312.

An act imposing a license fee on gasoline used or sold for use in the State of Iowa, providing for the payment, collection, refund, distribution and expenditure thereof; providing for penalties for violations of the law; amend section forty-six hundred thirty-five (4635) of the Code, 1924; and making an apporpriation for carrying out the provisions of this act.

Be it enacted by the General Assembly of the State of Iowa:

Section 1. Amount of Fee. A license fee of two cents (2c) per gallon or fraction of a gallon is hereby imposed on all gasoline in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided.

Section 2. Definition of Terms. (a) The term "distributor" as used in this act shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any gasoline to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary gasoline tank attached to and forming a part of such

motor vehicle, not more than twenty (20) gallons of gasoline without being considered a distributor.

(10) The term "person" includes, individual, partnership, corporation and association. The term "treasurer" means the treasurer of the State of Iowa.

Section 3. Price Placard—Misdemeanor—Penalty. Any person who sells or offers for sale at retail gasoline in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the sale price, the amount of the tax and the total price per gallon charged to customers on the different grades of gasoline sold. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars ($100.00), or imprisonment in the county jail for a period of not to exceed thirty days.

Section 4. Certificate Required of Distributor. Each distributor of gasoline shall, within thirty (30) days after the taking effect of this act, file with the treasurer a duly acknowledged certificate on forms prescribed and furnished by the treasurer for this purpose, showing the name under which such distributor is transacting business in the State of Iowa, the name and addresses of the several persons constituting the association or partnership, and if a corporation, the corporate name under which it is authorized to transact business and its resident general agent or other officers upon whom process may be served or who is authorized to represent it for all the purposes of

Section 5. Monthly Report—Remittance. Each distributor of gasoline shall, on or before the twentieth (20th) day of each calendar month, forward to the treasurer a state-

ment, sworn to by one of its principal officers, showing the total number of gallons of gasoline imported by him and the total number of gallons of gasoline sold or otherwise disposed of for the preceding calendar month and shall; at the same time remit to the treasurer the amount of the license fee for such preceding month for which such distributor is liable.

Section 6. Books Open to Inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of gasoline shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation, shall be confidential and any person divulging such information shall be guilty of a misdeameanor and upon conviction thereof, shall be liable to a fine not exceeding one thousand ($1,000.00) dollars.

Section 7. Misdemeanor—Penalty. Any distributor who shall fail to make, or refuse to make the reports to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sales of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 4 and 5 hereof shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred ($100.00) dollars, nor more than five hundred ($500.00) dollars.

Section 8. Reimbursement—Procedure—False Statement. Any person who shall buy or use any gasoline for

the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes, or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any gasoline for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in part or in whole upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase, which statement shall set forth the total amount of gasoline so purchased and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in any part upon any of the public highways of this state or upon the streets of any city or town of this state and the treasurer of state shall, upon the presentation of such invoices, cause to be repaid from the funds operated by the license fees collected on the use of gasoline as herein provided, the amount of such license fee paid by such consumer on gasoline used for the purposes other than propelling motor vehices as hereinbefore provided. All applications for refunds or reimbursements as provided for in this act shall be filed with the treasurer of state on blank forms provided by him for that purpose within ninety (90) days after the date on which gasoline shall have been purchased, as shown by the invoice. Any person, firm or corporation who shall make any false statements in connection with an application for the refund of any money or license fee as herein provided for, or who

shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand ($1,000.00) dollars.

Section 9. Distribution of Proceeds. License fees collected under the provisions of this act shall be distributed and disbursed as follows: One-third (1/3) to the primary road fund, one-third (1/3) to the township road fund, one-third (1/3) to the county road fund, which county and township funds the treasurer shall apportion among the counties of the state in the same ratio that the area of the county bears to the total area of the state, and on the first day of each month shall remit to the treasurer of each county the apportionments for its county and township road fund. The county treasurer, thereupon, shall apportion such township road fund among the townships of the county in the same ratio that the number of miles of township roads in the township bears to the total number of miles of township roads within the county, and shall remit quarterly to the clerk of each township the apportionment for its township road fund.

Section 10. Refunds Quarterly. The refunds provided for in section eight (8) of this act shall be made quarterly, by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state.

Section 10-a1. Employees — Appropriation. The treasurer of state is authorized to employ such clerical and

other help as may be needed to carry out the provisions of this act, the number and compensation of such employees to be fixed by the executive council. There is hereby appropriated out of the money received under the provisions of this act sufficient funds to pay for help employed by the treasurer in enforcing the act and for making such refunds as are provided for herein.

Section 11. Act Separable. If any part of this act is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this act.

Section 11-a1. Optional Property Tax Reduction. Section forty-six hundred thirty-five (4635) of the Code, 1924, is amended by striking from line two (2) of subsection two (2) of said section the following words, "less than one mill nor."

Section 12. Publication Clause. This act being deemed of immediate importance shall be in full force and effect from and after its publication in the Iowa Legionaire, a newspaper published in the city of Des Moines, Iowa, and the Sioux City Tribune, a newspaper published in Sioux City, Iowa.

Approved April 3, A. D., 1925.

I hereby certify that the foregoing act was published in the Sioux City Tribune April 13, 1925, and in the Winterset Madisonian April 15, 1925.

W. C. Ramsey, Secretary of State.

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The First Amendment of the Original Act.

LAWS OF THE FORTY-SECOND GENERAL ASSEMBLY.

Chapter 248.

Collection of Gasoline License Fee.

S. F. 347.

An Act to amend chapter six (6) of the laws of the forty-first general assembly, and sections one (1), three (3), seven (7) and eight (8) of said chapter, and to repeal sections four (4) and five (5) of said chapter, and enact substitutes therefor, relating to the collection of gasoline license fees.

Be it Enacted by the General Assembly of the State of Iowa:

Section 1. That the law as it appears in Section one (1) of chapter six (6) of the acts of the forty-first general assembly, be and the same is hereby amended by inserting after the word "gasoline" in line two (2) thereof the words "used or otherwise disposed of."

Section 2. That the law as it appears in section three (3) of chapter six (6) of the acts of the forty-first general assembly be amended by striking from lines four (4) and five (5) thereof the following: "the sale price, the amount of the tax and the total price per gallon charged to customers on the different grades of gasoline sold," and by substituting in lieu thereof the following:
"the total sale price per gallon, including license fee, of all grades of gasoline sold, said placard to have printed thereon the words "state license fee included.' When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him."

Section 3. That the law as it appears in section four (4) of chapter six (6) of the acts of the forty-first general assembly be and the same is hereby repealed and the following enacted in lieu thereof:

"Each distributor now engaged in business as herein defined, shall within thirty days after this act becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of gasoline in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the State of Iowa, and the principal place of business of such distributor, if such distributor is a firm or copartnership; the certificate shall also contain the names and addresses of the several persons constituting the same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined, shall, within sixty days after this act becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of gasoline within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor, permitting such person or persons to continue or engage in business as a

licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section."

Section 4. That the law as it appears in section five (5) of chapter six (6) of the acts of the forty-first general assembly be and the same is hereby repealed, and the following enacted in lieu thereof:

"On or before the twentieth day of each calendar month each distributor of gasoline shall file in the office of the treasurer of state at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of gasoline imported by him under the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which gasoline is imported into the state of Iowa. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

"If, after the prescribed license fees are so remitted and paid, any gasoline in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state, the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a

refund. The auditor of state shall issue his warrant drawn on the gasoline fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 8, chapter 6, laws of the 41st G. A.

"If any distributor shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within thirty days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition, whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act nor any of its provisions shall apply to foreign or interstate commerce."

Section 5. That the law as it appears in chapter six (6) of the acts of the forty-first general assembly be and the same is hereby amended by inserting immediately following section five (5) thereof, the following section:

"5-a. Every railroad company, or other person, firm or corporation transporting gasoline in tank cars or other receptacles from without the state consigned and delivered

to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of gasoline received at the station or place during the preceding calendar month, the name of the consignor and the name of the consignee. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of gasoline as herein defined shall be subject to inspection during ordinary business hours by the treasurer or his representatives."

Section 6. That the law as it appears in section seven (7) of chapter six (6) of the acts of the forty-first general assembly be and the same is hereby amended by inserting after the word "distributor" in line one (1) thereof a comma (,) and the following: "railroad or transportation company or agent of a railroad or transportation company."

Also further amend said section by inserting immediately following the word "reports" in line two (2) thereof the words, "or certificate."

Also further amend said section by striking from line seven (7) thereof the following: "4 and 5," and by substituting in lieu thereof the following: "four, five and five-a."

That said section be further amended by adding to the end thereof the following:

"If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer

thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor."

Section 7. That the law as it appears in section eight (8) of chapter six (6) of the acts of the forty-first general assembly, be and the same is hereby amended by inserting a comma (,) after the word "purchased" in line fourteen (14) thereof, and the words "paid for."

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The Original Act as Amended as Carried by Code Editor In Code of 1927 *as Follows:*

CODE OF IOWA, 1927.

Chapter 251-A1.
Gasoline License Tax.

5093-a1. Amount of Fee. A license fee of two cents (2c) per gallon or fraction of a gallon is hereby imposed on all gasoline used or otherwise disposed of in this state for any purpose whatsoever. Any person using gasoline within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided (41 G. A., ch. 6, Sec. 1; 42 G. A., ch. 248, Sec. 1).

5093-a2. Definition of Terms. The term "distributor" as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any gasoline to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary

gasoline tank attached to and forming a part of such motor vehicle, not more than twenty gallons of gasoline without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa (41 G. A., ch. 6, Sec. 2).

5093-a3. Sale Price—Placard—Misdemeanor—Penalty. Any person who sells or offers for sale at retail gasoline in this state, shall keep posted in a conspicuous place, most accessible to the public, a placard showing the total sale price per gallon including license fee, of all grades of gasoline sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars, or imprisonment in the county jail for a period of not to exceed thirty days (41 G. A., ch. 6, Sec. 3; 42 G. A., ch. 248, Sec. 2).

5093-a4. Certificates—License. Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of gasoline in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which

contain the name under which such distributor is transacting business within the State of Iowa, and the principal place of business of such distributor. If such a distributor is a firm or copartnership, the certificate shall also contain the names and addresses of the several persons constituting the same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, and the names and addresses of its principal officers, resident general or managing agent and attorney-in-fact.

Each distributor now engaged in business as herein defined shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of gasoline within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section (41 G. A. ch. 6, Sec. 4; 42 G. A., ch. 248, Sec. 3).

Reports—Remittances—Rebates—Penalties. On or before the twentieth day of each calendar month each distributor of gasoline shall file in the office of the treasurer of state at Des Moines, Iowa, a duly acknowl-

edged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of gasoline imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which gasoline is imported into the state of Iowa. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any gasoline in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state, the said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the gasoline fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in section 5093-a8.

If any distributor of gasoline shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within

thirty days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition, whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42 G. A., ch. 248) nor any of its provisions shall apply to foreign or interstate commerce (41 G. A., ch. 6, sec. 5; 42 G. A., ch. 248, sec. 4).

5093-b1. Tank Car Reports—Inspection of Books. Every railroad company, or other person, firm or corporation transporting gasoline in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car, or other conveyor of gasoline received at the station or place during the preceding calendar month, the name of the consignor and the name of the consignee. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of gasoline as herein defined, shall be subject to inspection during ordinary business hours by the treasurer or his representatives (42 G. A., ch. 248, sec. 5).

5093-a6. Books Open to Inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertains to the sale of gasoline shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representatives by such investigation, shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars (41 G. A., ch. 6, sec. 6).

5093-a7. Misdemeanor—Penalty. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificates to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of gasoline, or who shall make any incomplete, false or fraudulent return hereunder, or who shall in any manner violate the provisions of sections 5093-a4, 5093-a5 and 5093-b1 hereof, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor (41 G. A., ch. 6, sec. 6; 42 G. A., ch. 247, sec. 6).

5093-a8. Reimbursement—Procedure—False Statement. Any person who shall buy or use any gasoline for

the purpose of operating or propelling stationary gas-engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any gasoline for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state, or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fees paid by him, upon presenting to the treasurer of the state a statement accompanied by the original invoices showing such purchase, which statement shall set forth the total amount of gasoline so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of the state or upon the streets of any city or town of the state, and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from the funds operated by the license fee collected on the use of gasoline as herein provided, the amount of such license fee paid by such consumer on gasoline used for purposes other than for propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose, within ninety days after the date on which such gasoline shall have been purchased as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for a refund of any money

or license fee as herein provided, or who shall collect or cause to be repaid to him or any person any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed one thousand ($1,000.00) dollars (41 G. A., ch. 6, sec. 8; 42 G. A., ch. 248, sec. 7).

5093-a9. Distribution of Proceeds. License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. One-third to the county road fund, and one-third to the township road fund, which county and township road funds the treasurer shall apportion among the counties of the state in the same ratio that the area of the county bears to the total area of the state, and on the first days of each month shall remit to the treasurer of each county the apportionments for its county and township road fund. The county treasurer, thereupon, shall apportion such township road fund among the townships of the county in the same ratio that the number of miles of township roads in the township bears to the total number of miles of township roads within the county, and shall remit quarterly to the clerk of each township the apportionment for its township road fund (41 G. A., ch. 6, sec. 9).

5093-a10. Refunds Quarterly. The refunds provided for in section 5093-a8 shall be made quarterly by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of

state shall issue his warrants for refunds certified to him by the treasurer of state (41 G. A., ch. 6, sec. 10).

5093-a11. Employees—Appropriation. The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter, sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein (41 G. A., ch. 6, Sec. 10-a1).

5093-a12. Act Separable. If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter (41 G. A., ch. 6, sec. 11; 42 G. A., ch. 248, sec. 9).

The Original Act Which Was Amended to Enact The One Cent Tax.

Chapter 101. (42 G. A.)

Highways.

An Act to amend, revise, and recodify sections 4622, 4623, 4687 to 4706, inclusive, 4708, 4712, 4718, 4719, 4727 to 4738, inclusive, 4741, 4743, 4744, 4755, 5001 of Code 1924; and chapter 114 of the laws of the 41st General Assembly and to amend section 5002 of the Code, 1924, relative to the primary road system and primary road funds, to transfer the control of the primary road to the state, to empower the state to construct and maintain the primary road system, to do away with special assess-

ments for paving primary roads, to refund for such assessments so levied, to do away with the area basis for allotting primary road funds among the counties, to provide for an increase in the membership of the State Highway Commission, to further prescribe their rights and duties, and limiting their powers with respect to creating an obligation against the state.

Be it Enacted by the General Assembly of the State of Iowa:

Section 4687 to 4706, inclusive, 4708, 4712, 4718, 4719, 4727 to 4738, inclusive, sections 4741, 4744, 4755, 5001 of the Code, 1924, and Chapter 114 of the laws of the 41st General Assembly are hereby amended and codified to read as follows:

Section 5. Reimbursement of Counties. Where additional right of way has been acquired or where bridges have been built on the primary roads, under the supervision of the highway commission, and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges out of the primary road fund within three years from the taking effect of this act; provided, however, any county that has received or will receive during the year 1927 primary road money for use on secondary roads, the amount of such primary road money so received by such county and used on the secondary roads, shall be deducted from the amount of refunds provided for herein. The refunds made to any county under this section shall be at the option of the board of supervisors of said county, placed to the credit of the county road fund or the county bridge fund.

The Amendment Which Provides for and Creates the One Cent License Fee.

Chapter 103. (42 G. A.)
Highways—Audit—Gasoline Tax.

An Act to amend the law as it appears in Senate File No. 104 as enacted by the 42nd General Assembly of the State of Iowa, relating to the improvement of the primary road system, and the appointment of members of the highway commission, and an auditor therefor.

Be it Enacted by the General Assembly of the State of Iowa:

Section One. That the law as it appears in section 5 of Senate File No. 104, as enacted by the 42nd General Assembly of the State of Iowa be, and the same is hereby amended by striking from line 6 thereof the word "three (3)" five annual payments. The first payment to be made January 1, 1928, and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six (6) years nor to bear an interest rate to exceed five (5) per cent. There is hereby levied on all gasoline imported and used within this state a license fee of one (1) cent per gallon, which shall be in addition to the license fee levied by chapter six (6), laws of the 41st General Assembly. All of the provisions and conditions of said chapter six (6), laws of the 41st General Assembly, relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee collected herein. Out of the proceeds of said additional license fee, the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge and right of way refund be-

coming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund.

Section Two. That the law as it appears in section 16 of Senate File No. 104, as enacted by the 42nd General Assembly of the state of Iowa, be and the same is hereby repealed, and the following enacted in lieu thereof:

"All claims shall be itemized on voucher forms prepared for that purpose, sworn to by the claimants, certified to by the engineer in charge, and then forwarded to the state highway commission for audit and approval. Upon the approval by the state highway commission of vouchers which are payable from the primary road fund, such vouchers shall be forwarded to the auditor of state, who shall draw warrants therefor, and said warrants shall be paid by the treasurer of state from the primary road fund."

Section Three. That the law as it appears in section 21 of Senate File No. 104 as enacted by the 42nd General Assembly of the State of Iowa be, and the same is hereby repealed and the following enacted in lieu thereof:

"The state board of audit shall appoint the auditor of the state highway commission, who shall give bond in the sum of fifty thousand dollars ($50,000.00) for the faithful performance of his duties. The premium on said bond shall be paid by the state highway commission from its support fund. Said auditor shall check and audit all claims against the commission before such claims are approved by the commission, and shall keep all records and accounts relating to the expenditures of the commission.

He shall, in the checking and auditing of claims against the commission, and in keeping the records and accounts of the commission, be under the direction and supervision of the state board of audit, and act as an agent of said board. The state highway commission shall furnish said auditor with such help and assistants as may be necessary to properly perform the duties herein specified. The executive council may remove said auditor from office for failure to comply with the directions and instructions of the state board of audit in performance of the duties herein required."

Approved April 19, 1927.

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The Original Amendment Creating One Cent License Fee As Carried by the Code Editor in Code of 1927 as Follows:

CODE OF IOWA, 1927.

4755-b5. Refunds. Where additional right of way has been acquired, or where bridges have been built on the primary roads under the supervision of the highway commission, and paid for out of the county road or bridge fund since April 19, 1919, said county shall be reimbursed for said right of way and said bridges out of the primary road fund within five annual payments from the taking effect of this chapter; the first payment to be made January 1, 1928; and the board of supervisors is authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall, at the option of the board of supervisors of said county, be placed to the credit of the county road fund or the county bridge fund (38 G. A., ch. 237, sec. 4; 39 G. A., ch. 20 sec. 1; 39 G. A., ch. 188, sec. 2; 40 G. A., ch. 84 sec. 1; C., '24, sec. 4690; 42 G. A., ch. 101, sec. 5; 42 G. A., ch. 103, sec. 1).

Attempt is hereby made with great difficulty to apply 42 G. A., ch. 103, sec. 1, as an amendment to 42 G. A., ch. 101, sec. 5.

The provision of 42 G. A., ch. 101, sec. 5, relating to payments made during 1927 has been omitted because purely temporary.

For that part of the amendment relating to the additional tax on gasoline, see sec. 4755-b38.

4755-b38. Gasoline—Additional Tax. There is hereby levied on all gasoline imported and used within the state a license fee of one cent per gallon, which shall be in addition to the license fee levied by chapter 251-a1. All of the provisions and conditions of said chapter 251-a1 relating to the levy, collection or payment of the license fee on gasoline shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund (42 G. A., ch. 103, sec. 1).

Amendment Creating and Providing for Distributors' License.

ACTS OF 43RD GENERAL ASSEMBLY.

Chapter 29. Gasoline License Fees.

An Act to amend the law as it appears in chapter [illegible] of the Code of 1927, and to amend the law as it appears in section 5093-a4, and in section 5093-a5, of the Code of 1927, relating to the collection of gasoline license fees and the reports of distributors of gasoline, and to provide for the furnishing of a bond or financial statement by distributors.

Be it enacted by the General Assembly of the State of Iowa:

Section 1. That the law as it appears in chapter 251-a1 of the Code, 1927, be and the same is hereby amended by inserting the following section in said chapter immediately after section 5093-a4 of said chapter:

"Before any distributor shall engage in business as defined in this chapter, he shall first file with the treasurer of State a statement showing financial responsibility satisfactory to said department, or a corporate surety bond, payable to the State of Iowa, in the penal sum of $1,000, conditioned that said distributor will pay to the State of Iowa any and all fees required by the [illegible]. No license shall be issued unless the bond or financial statement required herein is attached to and delivered to the treasurer of State with the application for said license. Said bond or financial statement shall be approved by the secretary of state. If any distributor now engaged in business fails to file the bond or financial statement required by this act, within 30 days after the effective date thereof, his license shall be revoked."

Section 2. That the law as it appears in section 5093-a5 of the Code of 1927 be, and the same is hereby amended as follows:

By inserting after the period (.) in line 12 thereof, the following:

"If no importations are made for the preceding calendar month, a report shall be made to that effect on the forms prescribed herein and in the same manner."

Also, by striking from line 43 thereof, the word "thirty," and by substituting in lieu thereof the word "ten."

Section 3. This act being deemed of sufficient importance shall be in full force and effect from and after its passage and publication in the Des Moines Daily Record, a newspaper published at Des Moines, Iowa, and in the Muscatine Journal, a newspaper published at Muscatine, Iowa.

Senate File No. 99. Approved April 5, A. D., 1929 (Certification of Secretary of State).

An Amendment Changing the Law as to Apportionment of Tax.

ACTS OF THE 43RD GENERAL ASSEMBLY.

Chapter 20.

Section 75, Apportionment of Gasoline Tax.

Section 5093-a9, Code of 1927, is amended by striking out all parts thereof after line 4, and by inserting in lieu thereof said stricken words, the following, to wit:

"Two-thirds to the secondary road construction fund of the several counties of the state. The Treasurer shall

apportion said two-thirds portion among the counties of the state, and shall, on the first day of each month, remit to the Treasurer of each county, the amount apportioned to the secondary road construction fund of the county.

—o—

CODE OF 1927 AND 1931.

12893. Prohibited Acts—Misdemeanors. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor (C51, sec. 2675; R60, sec. 4302; C73, sec. 3966; C97 Sec. 4905; C24, 27 sec. 12893).

12894. Punishment for Misdemeanors. Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this state, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment (C51, sec. 2676; R60, sec. 4303; C73, sec. 3967; C97, sec. 4906; C24, 27, sec. 12894).

4755-b5. Refunds. Where additional right of way has been acquired or where bridges or culverts have been built on the primary roads under the supervision of the highway commission and paid for out of the county road or bridge funds since April 19, 1919, said county shall be reimbursed for said right of way and said bridges or culverts out of the primary road fund in seven annual payments. Provided, however, in counties where the total refund does not exceed the sum of five thousand dollars the entire refund shall be made at the time of the first annual payment. The first payment shall be made January 1, 1928, and the board of supervisors is

authorized to issue certificates anticipating the amount to be received. Said certificates shall not be issued for a period to exceed six years, nor to bear an interest rate to exceed five per cent.

The refunds made to any county under this section shall, upon their receipt by the county, be placed to the credit of the secondary road construction fund unless heretofore pledged.

Payments already made under the section for which this section is a substitute shall be readjusted by the highway commission to conform herewith (C24, sec. 4690; C27, sec. 4755-b5; 42 Ex. G. A., ch. 3; 43 G. A., ch. 20, sec. 74).

4755-b31. Maintenance Fund for Commission—Report. There is hereby created a fund for the maintenance of the state highway commission consisting of two and one-half per cent of all moneys paid into the state treasury under the act regulatory of licenses on motor vehicles. Said fund shall be used for no other purpose than as a maintenance fund for the state highway commission and shall be drawn out only on warrants drawn by the auditor of state on itemized vouchers approved by the state highway commission. The expenditures of said commission shall be audited by the state board of audit and a full and complete report of all said expenditures shall be published in the annual report under the act creating the state highway commission (C24, sec. 4744; C27, Sec. 4755-b31). Referred to in sec. 4630-c1.

4755-b38. Motor Vehicle Fuel—Additional Tax. There is hereby levied on all motor vehicle fuel imported and used within this state a license fee of one cent per gallon, which shall be in addition to the license fee levied by

chapter 251-a1. All of the provisions and conditions of said chapter 251-a1 relating to the levy, collection or payment of the license fee on motor vehicle fuel shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge, culvert and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund (C'27, sec. 4755-b38; 42 Ex. G. A., ch. 3; 44 G. A., ch. 108).

CODE OF 1931.

CHAPTER 251-A1.

MOTOR VEHICLE FUEL TAX.

5093-a1. Amount of fee. A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for, unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided (C'27, Sec. 5093-a1; 44 G. A., ch. 108).

Additional fee of one cent, Sec. 4755-b38. Supra.

5093-a2. Definition of terms. The term "distributor" as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be

used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, however, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary motor vehicle fuel tank attached to and forming a part of such motor vehicle, not more than twenty gallons of motor vehicle fuel without being considered a distributor.

The term "person" includes individual, partnership, corporation and association.

The term "treasurer" means the treasurer of the state of Iowa.

"Motor vehicle fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose, except the products commonly known as kerosene and/or distillate or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel (C'27, sec. 5093-a2; 44 G. A., ch. 108).

5093-a3. Sale price placard—misdemeanor—penalty. Any person who sells or offers for sale a retail motor vehicle fuel in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the total sale price per gallon including license fee, of all grades of motor vehicle fuel sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner desig-

nated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars or imprisonment in the county jail for a period not to exceed thirty days (C'27, sec. 5093-a3; 44 G. A., ch. 108).

5093-a4. Certificate—license. Each distributor now engaged in business as herein defined, shall within thirty days after this chapter becomes effective, and every distributor desiring to engage in such business, shall before beginning the sale or manufacture of motor vehicle fuel in this state, file a duly acknowledged certificate with the treasurer of state on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the state of Iowa, and the principal place of business of such distributor. If such distributor is a firm or co-partnership, the certificate shall also contain the names and addresses of the several persons constituting same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined, shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in business, shall, before beginning the manufacture or sale of motor vehicle fuel within the state, procure a license from the treasurer of state, permitting said distributor to transact said business within the state of Iowa. The treasurer of state, upon application of any person

or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section (C'27, sec. 5093-a4; 44 G. A., ch. 108).

Referred to in Sec. 5093-a7.

5093-c2. Distributor—requirements. Before any distributor shall engage in business as defined in this chapter, he shall first file with the treasurer of state a statement showing financial responsibility satisfactory to said department, or corporate surety bond payable to the state of Iowa in the penal sum of one thousand dollars, conditioned that said distributor will pay to the state of Iowa any and all fees required by the law. Said bond, or financial statement, shall be approved by the treasurer of state. No license shall be issued unless the bond, or financial statement, required herein is attached to and delivered to the treasurer of state with the application for said license. If any distributor now engaged in business fails to file the bond, or financial statement, required by this section within thirty days after the effective date thereof, his license shall be revoked (43 G. A., ch. 29, p. 1).

5093-a5. Reports—remittance—rebates and penalties. On or before the 20th day of each calendar month each distributor of motor vehicle fuel shall file in the office of the treasurer of state, at Des Moines, Iowa, a duly

acknowledged report on forms prescribed and furnish
by said treasurer, showing the total number of gallo
of motor vehicle fuel and/or of any substance or materi
imported into the state for the purpose of manufacturi
mixing, blending or compounding motor vehicle fuels
defined in this chapter imported by him during the prece
ing calendar month, the date of receipt, unloading poi
tank car identification and invoice gallonage of each a
every tank car or other receptacle in which motor vehi
fuel is imported into the state of Iowa. If no importatio
are made for the preceding calendar month, a report sh
be made to that effect on the forms prescribed here
and in the same manner. At the same time he shall rem
to the treasurer the amount of the license fee for su
preceding month; provided, however, that in computi
said amount a deduction of 3 per cent of the invoi
gallonage imported may be made for evaporation a
loss.

If, after the prescribed license fees are so remitt
and paid, any motor vehicle fuel in the possession of
licensed distributor is destroyed by fire, lightning, sto
or accident not caused by the fault of such distributor
any employee thereof, before being sold or used by hi
upon proper application therefor and proof of such d
struction or loss satisfactory to the treasurer of state, t
said treasurer is authorized to certify to the amount of t
license fee so paid thereon to the auditor of state as
refund. The auditor of state shall issue his warra
drawn on the motor vehicle fuel fund in payment there
and the same shall be paid in the same manner and fro
the same fund as those refunds authorized in Sec. 5093-a

If any distributor of motor vehicle fuel shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalties within ten days after the date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition, whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such license so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42 G. A., ch. 248) nor any of its provisions shall apply to foreign or interstate commerce (C'27, sec. 5093-a5; 43 G. A., ch. 29, Sec. 2; 44 G. A. ch. 108).

Referred to in Sec. 5093-a7.

5093-b1. Tank car reports—inspection of books. Every railroad company, or other person, firm or corporation transporting motor vehicle fuel in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report on forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad

or other carrier, the date of unloading and identification of each tank car or other conveyor of motor vehicle fuel received at the station or place during the preceding calendar month, the number of gallons of motor vehicle fuel and/or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of motor vehicle fuel as herein defined shall be subject to inspection during ordinary business hours by the treasurer or his representatives (C'27, sec. 5093-b1; 44 G. A. ch. 108).

Referred to in Sec. 5093-a7.

5093-a6. Books open to inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of motor vehicle fuel shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation, shall be confidential, and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars (C'27, Sec. 5093-a6; 44 G. A., ch. 108).

5093-a7. Misdemeanor—penalty. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to the treasurer as herein prescribed, or shall refuse to permit the treas-

urer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of motor vehicle fuel, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of sections 5093-a4, 5093-a5 and 5093-b1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor (C'27, Sec. 5093-a7; 44 G. A., ch. 108).

5093-a8. Reimbursement—procedure—false statement. Any person who shall buy or use any motor vehicle fuel for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or air-craft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any motor vehicle fuel for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid to the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase, which statement shall set forth the total amount of motor vehicle fuel so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in

whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state, and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from the funds collected hereunder, the amount of such license fee paid by such consumer on motor vehicle fuel used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose, within ninety days after the date on which such motor vehicle fuel shall have been purchased, as shown by the invoice. Any person, firm or corporation who shall make any false statement in connection with an application for the refund of any money or license fee as herein provided, or who shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (C'27, sec. 5093-a8; 44 G. A., ch. 108.

Referred to in Sec. 5093-a5, 5093-a10.

5093-a9. Distribution of proceeds. License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. Two-thirds to the secondary road construction fund of the several counties of the state. The treasurer shall apportion said two-thirds portion among the counties of the state in the ratio that the area of each county bears to the total area of the state, and

shall, on the first day of each month, remit to the treasurer of each county the amount apportioned to the secondary road construction fund of the county (C27, sec. 5093-a9; 43 G. A., ch. 20, Sec. 75).

5093-a10. Refunds quarterly. The refunds provided for in Section 5093-a8 shall be made quarterly by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state (C27, sec. 5093-a10).

5093-a11. Employees—appropriations. The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein, and to pay the cost of postage, equipment, supplies and printing used by the department (C27, sec. 5093-a11; 44 G. A., ch. 125).

5093-a12. Act separable. If any part of this chapter is held to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the remaining portions of this chapter (C27, sec. 5093-a12).

FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1933

NO. 555

MONAMOTOR OIL COMPANY
Appellant,

vs.

RAY E. JOHNSON, Treasurer of the State of Iowa, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA

BRIEF OF APPELLEES

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In the Supreme Court of the United States

OCTOBER TERM, 1933

NO. 555

MONAMOTOR OIL COMPANY
Appellant,

vs.

RAY E. JOHNSON, Treasurer of the State of Iowa, ET AL,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA

BRIEF OF APPELLEES

NATURE OF THE ACTION

This is an action in equity brought by Appellant to restrain the executive officers of the State of Iowa from taking any action to enforce the motor vehicle fuel tax laws of the State of Iowa at a time when the only action being pursued by the officers, or contemplated by them, was the prosecution of a suit at law previously commenced in the state Court for a money judgment against Appellant for motor vehicle fuel license fees alleged to be due the State of Iowa.

STATEMENT OF THE CASE

The statement of the case made by the trial Court is so clear and comprehensive that we are tempted to adopt its statement as found in the opinion commencing on page 79 of the transcript as the statement of the case. However, some useful purpose may be served by setting out briefly here the situation out of which the case arose, and the primary questions before the Court for determination.

The motor vehicle fuel tax law of the State of Iowa as it existed at the time this case arose is contained in Chapter 251-A1 of the Code of 1931, said chapter being set out in full in the appendix to this Brief and Argument. That Chapter imposes a license fee of two cents per gallon. Subsequent to its original enactment another act was passed levying an additional one cent per gallon on motor vehicle fuel. At the time this case arose the provisions of that act appeared in the Code of 1931 as Section 4755-b38, and in view of its brevity it is set out herein in full as follows:

> "4755-b38. Motor vehicle fuel—additional tax. There is hereby levied on all motor vehicle fuel imported and used within this state a license fee of one cent per gallon, which shall be in addition to the license fee levied by Chapter 251-A1. All of the provisions and conditions of said Chapter 251-A1 relating to the levy, collection or payment of the license fee on motor vehicle fuel shall apply with equal force to the license fee levied herein. Out of the proceeds of said additional license fee the state highway commission shall, each year, set aside a sufficient amount to pay the portion of the bridge, culvert, and right of way refund becoming due and payable on January first of the succeeding year. The remainder of the proceeds of said additional license fee shall be credited to the primary road fund."

The Mona Motor Oil Company at the time this action arose and for several years prior thereto was an Arizona corporation engaged in the oil distributing business in the State of Iowa and surrounding states wtih its principal place of business at Council Bluffs, Iowa, and it maintained in Iowa some fifty-nine service stations at which motor vehicle fuel was sold at retail, owning thirty of the stations and leasing twenty-nine others. It also maintained at Council Bluffs, Iowa, a bulk plant into which motor vehicle fuel was dumped from tank cars in which it was brought into the state and from this bulk and storage plant the fuel was withdrawn for sale locally in Iowa and to some extent also for sale in Nebraska and surrounding states.

The boundary line between the State of Iowa and Nebraska is the Missouri River, Council Bluffs being on the Iowa side of the River and Omaha, Nebraska on the Nebraska side of the River. Some years ago the Missouri River changed its course at about that point leaving a strip of Iowa territory on the west side or Nebraska side of the Missouri River. This strip of territory is known as Carter Lake, Iowa, and it belongs to Iowa although on the Nebraska side of the river and separated from the remaining portion of the State of Iowa by the Missouri River. On this strip of land the Mona Motor Oil Company maintained a refinery for a time at which crude oil coming from the oil fields of Oklahoma and Kansas were refined, and there was maintained at Carter Lake a bulk plant which is known in this record as Omaha Bulk where refined motor vehicle fuel was stored until sold.

No motor vehicle fuel is produced in Iowa and none was ever refined in Iowa except such as was refined, during a lim-

ited period, at Carter Lake, Iowa, by the Mona Motor Oil Company. The trial Court found the facts on that proposition as follows:

> "No gasoline has ever been produced or refined in Iowa, except that refined by the Mona Motor Oil Company at Carter Lake, Iowa, prior to April 1, 1932." Tr. p. 87.

At the time the Mona Motor Oil Company began to do business in Iowa about the year 1927, it took out a license as an Iowa distributor for which no fee is charged and from that time made its reports monthly as required by the Iowa statutes and paid to the State of Iowa the license fees shown by these reports to be due until early in the year 1932 when the situation developed which resulted in this litigation.

The Mona Motor Oil Company had requested of the Treasurer of the State of Iowa, who is the officer charged with the collection of the motor vehicle fuel license fees, that the bulk plant at Carter Lake be treated as outside the State of Iowa and that movements of motor vehicle fuel from Carter Lake to Council Bluffs, Iowa, be reported as imported gasoline or motor vehicle fuel. In the opinion of the trial Court this fact is stated and found as follows:

> "At one time the oil company requested the treasurer of state to treat gasoline imported to Carter Lake as being in Nebraska and called it the Omaha bulk station. They were granted this permission and subsequent reports were made on that basis. (fol. 88)." Tr. p. 85.

Such products, in fact, did move through the State of Nebraska in order to cross the Missouri River at Omaha and enter the State of Iowa for purposes of consumption and the Mona

Motor Oil Company had reported movements of that character and reported receipts from Carter Lake at Council Bluffs as imported gasoline or motor vehicle fuel.

About the month of April, 1932, it was discovered by officers of the State of Iowa that tank cars billed as lubricating oil were being unloaded at the bulk plant at Council Bluffs as gasoline and the officers of the State of Iowa immediately instituted an investigation which disclosed that some forty carloads of gasoline had thus been shipped from Carter Lake through Nebraska territory and across the Missouri River and unloaded in the bulk plant at Council Bluffs, without any report thereof being made to the Treasurer of the State of Iowa. Criminal proceedings were instituted against the officers of the company and the corporation and indictments returned, and about the same time an audit was made of the books of the company which disclosed that these forty cars had been shipped as lubricating oil although they were, in fact, gasoline and that the records of the Mona Motor Oil Company had been changed by erasing a part of the word "gasoline" and writing in the word "oil" so as to make the record read "gas oil," and the audit disclosed that the tax on these forty cars was some $27,000.00. The criminal cases were all disposed of by accepting pleas of guilty from the officers in some of the cases and dismissing others, and the indictments against the corporation were dismissed and all these criminal cases were disposed of before the case at bar was instituted.

After the criminal cases were disposed of, the State brought an action at law in the state Court at Council Bluffs asking a money judgment against the Mona Motor Oil Com-

pany for the tax on these forty cars of gasoline. This suit was aided by an attachment against the real estate of the Mona Motor Oil Company, the attachment lien being perfected by the entry by the Sheriff of a notation in the lien index kept in the office of the Clerk of the District Court of the County. The Sheriff's return on the writ of attachment appears on the writ of attachment commencing on page 215. There was no seizure of any of the property of the Mona Motor Oil Company, no attempt to take possession of it nor to interfere in any way with the right of the Mona Motor Oil Company to use and control all of its property except that it could not have sold the real estate free of the attachment lien.

After this suit had been started in the state Court the Mona Motor Oil Company brought this action in equity in the United States District Court for the Southern District of Iowa, praying for an injunction against the executive officers of the state restraining them from taking any action to enforce the motor vehicle fuel tax laws of the state. Thereafter, they appeared in the case previously commenced in the state Court and filed a petition for the removal of that case to the United States District Court. After the case was docketed in the United States District Court a motion to remand the same to the state Court was filed by the plaintiffs on the ground that the action was between the State of Iowa and the Mona Motor Oil Company and there was no such diversity of citizenship as would authorize the removal. This motion was sustained and the case remanded to the state Court. No further proceedings were had in the state Court in view of the pendency of this action.

The constitutionality of the motor vehicle fuel tax laws

of the State of Iowa were assailed by Appellant on a number of grounds. Some of these grounds had to do with the alleged failure of the act to comply with some of the provisions of the State Constitution of the State of Iowa but since these grounds of attack have been abandoned by Appellant in the brief filed in this case, no reference need be made to them.

While the allegations of the petition with reference to the violations of the Constitution of the United States, both in the provisions of the law under which the tax is levied and the manner in which it is administered by the officers of the State of Iowa, are numerous, these claims can be grouped generally into three classes as follows:

First, that the motor vehicle fuel tax laws of the State of Iowa by their provisions and the manner in which they are administered creates a burden upon interstate commerce.

Second, that the collection of the tax from the distributor when the levy is made against the user amounts to a taking of property without due process of law.

Third, that permitting the users of motor vehicle fuel for purposes other than the operation of motor vehicles upon the public highways to obtain a refund and the turning over to them of taxes collected from the distributor is a taking of property for other than a public purpose and in violation of both the State Constitution and the Constitution of the United States.

The defendants (Appellees) below filed a somewhat

voluminous answer in which these charges were denied and in which it was alleged that if there was discrimination it was in complainant's favor and it could not be heard to raise the question, and further that the complainant had collected from the users the amount of this tax by virtue of the provisions of the motor vehicle fuel tax laws of the State of Iowa and it could not now claim as an excuse for retaining the money that those laws were unconstitutional and void, and further that Appellant was estopped because it had regularly paid the tax for a number of years without protest or challenge during which the state or its subdiyisions had incurred indebtedness of some $100,000,000 with complainants knowledge and in reliance on the revenues produced by the act.

The Court, in deciding the case, filed an exhaustive opinion with findings of fact and conclusions of law which is set out on pages 79 to 132 of the transcript in this case to which reference is made for a more complete and succinct statement of the case.

In view of the fact that it will be necessary to refer to these statutes in detail in the argument with reference to various propositions urged by Appellant, only a general statement of their nature and method of operation will be attempted here.

Chapter 251-A1 of the Code imposes the tax in Section 5093-a1 thereof in the following language:

> "A license fee of two cents per gallon, or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose what-

soever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid."

Section 4755-b38 imposes an additional one cent tax and provides:

"All of the provisions and conditions of said Chapter 251-A1 relating to the levy, collection or payment of the license fee on motor vehicle fuel shall apply with equal force to the license fee levied herein."

The Supreme Court of the State of Iowa has held what is obvious from a reading of this section that its effect was to increase by one cent the motor vehicle fuel license fee imposed by Chapter 251-A1. See

State vs. Northern Oil Company, 209 Iowa, 980.

Section 5093-a2 of Chapter 251-A1 defines a distributor as follows:

"The term 'distributor' as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be used within the state or sold or otherwise disposed of by him within the state for use in the state."

The chapter also contains a provision that the term "person" shall include individual, partnership, corporation and association.

The Chapter further provides that a distributor, as above

defined, shall make a report on the twentieth of each calendar month to the Treasurer of State on forms prescribed by the treasurer, which report shall show in the language of the chapter,

> "The total number of gallons of motor vehicle fuel and/or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter, imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which motor vehicle fuel is imported into the State of Iowa. If no importations are made during the preceding calendar month a report shall be made to that effect on forms prescribed herein and in the same manner. At the same time he shall remit to the treasurer the amount of license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss."

Said Chapter further provides in Section 5093-a3 that sellers of motor vehicle fuel shall keep posted at their place of business a placard advising the public that the state license fee is included in the purchase price of all motor vehicle fuels, the language of said section being as follows:

> "Any person who sells or offers for sale at retail motor vehicle fuel in this state, shall keep posted in a conspicuous place most accessible to the public at his place of business a placard showing the total sale price per gallon including license fee on all grades of motor vehicle fuel sold, said placard to have printed thereon the words 'state license fee included'."

In connection with these provisions it should be borne in

mind what was stipulated in this record to be a fact, viz: that all the motor vehicle fuel used in the State of Iowa must come into the state from some other state in some form because there is no petroleum of any kind produced within the state.

The Chapter further provides in Section 5093-a8 thereof that if any person buy or use motor vehicle fuel for any purpose other than

> "propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state shall be reimbursed and repaid to the extent of such license fee paid by him."

This section further provides for the filing of the claim for refund and provides that it must have attached thereto the original invoices showing the purchase of the motor vehicle fuel.

It will be observed that the tax is levied by the provisions of Section 5093-a1 against the user. And that by the provisions of Section 5093-a5, distributors, who are the persons first receiving the motor vehicle fuel in the State of Iowa, are required, as an administrative feature, to pay the tax on the motor vehicle fuel used or sold for use by them in the State of Iowa. And they in turn are required to pass on the tax to the consumer or user because by the provisions of Section 5093-a3, they and every dealer selling motor vehicle fuel at retail must advise the purchaser that the price he is paying includes the license fee.

The Court below in its opinion outlined the act as follows:

"Upon consideration of the entire act, the intention of the legislature is readily apparent; first, a levy is made upon all motor vehicle fuel used or consumed in the state; second, the person or persons using the fuel within the state are made liable for the payment of the fees; third, a refund is granted to users of such motor vehicle fuel other than users on the public highways; and, fourth, the distributor, for the privilege of selling and dispensing of gasoline within the state of Iowa, is to be a toll collector and administer the collection of the tax, making his reports as required by Section 5093-a5, and in either paying or advancing the tax on the 20th day of the month following that on which the gasoline was imported and unloaded by him."

In the administration of this chapter, the provisions of the law as above outlined and interpreted, have been strictly adhered to by the administrative officers of the State of Iowa. And the procedure followed is that which is clearly contemplated by the statutes.

On the twentieth of each month each distributor files a report in which he lists all motor vehicle fuel received by him during the preceding calendar month. That is to say, that on the twentieth of March, for instance, he would report all the fuel received during the month of February showing the date of unloading from tank car, or other receptacle in which it was received, so that the State of Iowa does not require even a report of motor vehicle fuel received from outside the state for a period of at least twenty days after the fuel is unloaded, and in this report a deduction is made of the motor vehicle fuel sold for use outside the State of Iowa leaving a balance on which the tax is computed. In each case the distributor makes his own report, computes the tax himself and remits to the treasurer the license fees shown by said report.

One of the blank forms furnished to distributors is set out as exhibit 3 on page 291 of the Transcript. It does not contain a space for deducting any balance of motor vehicle fuel on hand at the end of the month. And the evidence disclosed that all distributors paid without making or requesting any such deduction. This practice was encouraged by the officers of the state, and is the practice contemplated by the statute. The distributor may, as suggested by the trial Court, be required to advance these fees on any balance of motor vehicle fuel remaining unsold in return for the privilege of engaging in business as a distributor. Whether there would be a balance would, of course, depend upon the rapidity of the turn over. But since the payment is not required to be made until the 20th of the month following the month of receipt, such balance would be in any event trivial and inconsequential.

Complainant (Appellant herein) attempted to make the point that there was some invasion of its rights requiring it to pay the tax on motor vehicle fuel which had not yet been sold or disposed of or, in other words, on motor vehicle fuel which it had on hand at the end of the month. It is obvious, of course, that the result in the long run would be the same whether the method of reporting which was adopted was used or whether an inventory was taken at the end of each month. The fact seems to be that no distributor ever requested the privilege of deducting the amount on hand at the end of the month and the complainant in this case never requested any such privilege, and it is obvious that a great inconvenience would result to it if it were required to report in that manner because it would involve taking an inventory, not only at the bulk plant at Council Bluffs, but at each of the fifty-nine filling stations operated by complainant. And it is suggested

further that it is within the power of the State to prescribe the conditions under which distributors of motor vehicle fuel within the State shall be permitted to engage in that occupation.

Other features of the case will be discussed in more detail in connection with specific complaints made against the statutes.

SUMMARY OF ARGUMENT

I.

THE FINDINGS OF FACT BY THE TRIAL COURT ARE BINDING ON APPEAL WHERE THERE IS ANY EVIDENCE TO SUSTAIN THEM.

The general presumption, on appeal, is in favor of the findings of fact made by the lower court.

4 C. J., 774.
Manhattan L. Ins. Co. vs. Wright, 126 Fed. 82.

See also

Parkinson vs. Thompson, 164 Ind. 609, 73 N. E. 109, 3 Ann. Cas. 677.
Chase vs. Hinkley, 126 Wis. 75, 105 N. W., 230, 110 A. S. R. 896, 5 Ann. Cas. 328, 2 L. R. A. (N. S.) 738.

II.

THE PRESUMPTION IS ALWAYS IN FAVOR OF THE CONSTITUTIONALITY OF LEGISLATIVE ENACTMENTS AND SUCH ENACTMENTS WILL NOT BE DECLARED UNCONSTITUTIONAL UNLESS SUCH UNCONSTITUTIONALITY CLEARLY APPEARS.

It is an elementary principle that where the validity of a statute is assailed and there are two possible interpretations, by one of which the statute would be unconstitutional and by the other it would be valid, the Court should adopt the construction which would uphold it.

6 R. C. L. Section 77.
Presser vs. State of Illinois, 116 U. S. 252.
Knights Templars' & Masons' Life Indemnity Co. vs. Jarman, 187 U. S. 197.
Harriman vs. Interstate Commerce Commission, 211 U. S. 407.
United States vs. Delaware & H. Co., 213 U. S., 366.

III.

THIS ACTION BY COMPLAINANT (Appellant) IN EQUITY FOR INJUNCTIVE RELIEF ONLY IS NOT MAINTAINABLE FOR THE FOLLOWING REASONS:

a. The Complainant has an adequate remedy at law because there is nothing involved except the question as to the amount of motor vehicle fuel license fees, if any, owing by

complainant to the State of Iowa and under such circumstances equity will not take jurisdiction, and no irreparable injury appears.

Authorities:

21 C. J., pages 35, 41 and 38;
28 U. S. C. A., Sec. 384 (Judicial Code, Sec. 267).
Boise Artesian Hot & Cold Water Co. vs. Boise City, 213 U. S. 276.
U. S. vs. Bitteroot Dev. Co., 200 U. S. 451.
Southern Pacific Railroad Co. vs. U. S., 200 U. S. 341.
Buzard vs. Houston, 119 U. S., 347.
Wehrman vs. Conklin, 155 U. S. 314.
N. Y. Guaranty & Co. vs. Memphis Water Works Co., 107 U. S. 205.
Warmath vs. O'Daniel, 159 Fed. 87, 16 L. R. A. (N. S.) 414.
Grand Chute vs. Winegar, 15 Wall. 373, 21 L. ed. 174;
Phoenix Mutual Life Insurance Co. vs. Bailey, 13 Wall 616, 20 L. ed. 501.
Bronson vs. Cook, 247 Fed. 601, 14 R. C. L. 399.

"Relief will be denied to a person who seeks the aid of a Court of equity against pending or threatened proceedings at law where it appears that the matters relied upon are such that if established would constitute a defense in the law action and where the plaintiff's right will be fully protected by a successful defense; that is, where no wrong is threatened beyond the assertion of the legal demand open as it is to such defense."

21 C. J. p. 68.

b. A Court of concurrent jurisdiction (state court) had first obtained jurisdiction and under such circumstances the

Court first obtaining jurisdiction should be allowed to exhaust it.

Authorities:

7. R. C. L. 1067, and notes 8, 9, 10 and 11.
15 C. J. 1155, Sec. 634.
15 C. J. 1161, Sec. 637.

c. The action is against the State of Iowa and to permit its maintenance would be in violation of the Eleventh Amendment to the Constitution of the United States, because there is not here, as in *Ex parte Young*, 209 U. S. 123 and the cases which follow it, any action by the officers of the state, actual or threatened, which would be an invasion of the rights of the complainant or a tresspass upon the rights of the complainant and no action whatever by the officers of the state, except the institution of a suit at law in the state court for a money judgment for the amount of motor vehicle fuel license fees alleged to be due.

Authorities:

In Re: Ayers, 123 U. S. 443.
Fitts vs. McGhee, 172 U. S. 516.
Ex parte Young, 209 U. S. 123.
Cline vs. Frink Dairy Co. 274 U. S. 445.
Fenner vs. Boykin, 271 U. S. 240.
Boynton vs. Fox West Coast Theatre Corp. 60 Fed. 2nd, 251.
Sterling vs. Constantin, et al. 287 U. S. 37.

d. Section 265 of the Federal Judicial Code prohibits

the issuance of an injunction by a federal Court to prevent prosecution of a suit in the state courts.

Authorities:

28 U. S. C. A., Sec. 379 (Sec. 265 Judicial Code).
Amusement Syndicate Co. vs. El Paso Land Improvement Co. 251 Fed. 345.
Rensselaer & S. R. Co. vs. Bennington & R. R. Co. 18 Fed., 617-618.
Higgins vs. California Prune & Apricot Growers, 3 Fed. (2d) 896.
Diggs vs. Wolcott, 8 U. S. 179.
Watson vs. Jones, 80 U. S. 679.
Haines vs. Carpenter, 91 U. S. 254.
Dial vs. Reynolds, 96 U. S. 340.
Hitchcock vs. Galveston, 96 U. S. 341.
Carlisle vs. Bundy, Fed. Cas. No. 2, 410.
City Bank vs. Skelton, Fed. Cas. No. 2, 739.
Livestock Dealers' & Butchers ass'n. vs. Crescent City Live Stock Landing & Slaughter House Co., Fed. Cas. No. 8, 408.
Evans vs. Pack, Fed. Cas. No. 4, 566.
Domestic & Foreign Missionary Soc. vs. Hinman 13 Fed. 161.
Harrison Wire Co. vs. Wheeler, 11 Fed. 206.
Chicago, R. I. & P. Ry. Co. vs. St. Joseph Union Depot Co. 92 Fed. 22.
Atlantic Coast Line R. Co. vs. Daniels, 175 Fed. 302.
The Lotta, 150 Fed. 219.
Kansas City Gas. Co. vs. Kansas City, 196 Fed. 500.
Kittredge vs. Emerson, 15 N. H. 227.
Smith vs. Jennings, 238 Fed. 48; reversing, 232 Fed. 921.
American Graphophone Co. vs. Pickard, 201 Fed. 546.

IV.

THE IOWA STATUTES LEVYING MOTOR VEHICLE FUEL LICENSE FEES ON MOTOR VEHICLE FUEL USED WITHIN THE STATE DOES NOT CREATE A BURDEN ON INTERSTATE COMMERCE IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES FOR THE FOLLOWING REASONS:

a. The tax is not levied against the product (motor vehicle fuel) at all but is an excise tax levied against the use of the product in Iowa.

Authorities:

Chapter 251-A1, Code of Iowa 1931, in Section 5098-a1 thereof, imposes a tax

"on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever."

Pierce Oil Co. vs. Hopkins, 264 U. S. 137.
Standard Oil Co. vs. Brody, 157 Ark. 114, 239 S. W. 753.
Altitude Oil Company vs. People, 70 Colorado, 453, 202 Pac. 180.
Standard Oil Company vs. Jones, 48 S. D. 432, 205 N. W. 72.

b. Even though the tax were levied against the product rather than against the use of the product, it would not violate the commerce clause of the Constitution because there is no requirement that distributors either report or pay the tax until at least twenty days have elapsed after the fuel is unloaded and comes to rest in Iowa, and when products moving in interstate commerce come to rest in a state they become

subject to the tax laws of that state as other property.

Authorities:

Chapter 251-A1, Code 1931, in Section 5093-a5 thereof, which is the section requiring distributors to report, provides that distributors shall report on the twentieth of each calendar month only motor vehicle fuel received and unloaded during the preceding calendar month.

Sonneborn Bros. vs. Cureton, 262 U. S. 506.
Eastern Air Transport Inc. vs. South Carolina Tax Commission et al, 285 U. S. 147.
Gregg Dyeing Co. vs. Query, et al., 286 U. S. 472.
In Re: Opinion of Justices, 120 Atl. 629.
Bowman vs. Continental Oil Co., 256 U. S. 642.

c. The statute of Iowa taxing motor vehicle fuel does not purport to levy any tax on motor vehicle fuel sold in Iowa for use outside the State of Iowa, and distributors are permitted to deduct and do deduct all such fuel in making their reports and paying their tax.

Authorities:

Chapter 251-A1, Code of 1931, in Section 5093-a1 thereof, imposes a tax on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever, and

Section 5093-a2, defines a distributor as one who brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be used within the state or sold or otherwise disposed of by him within the state for use in the state.

Distributors, in making their reports, deduct sales made of motor vehicle fuel for use outside the state.

Transcript, page 296 A—Exhibit 11.

d. The statute of Iowa taxing the use of motor vehicle fuel, according to its express terms, exempts from its operation transactions in interstate commerce.

Authorities:

Chapter 251-A1, Code, 1931, in the latter part of Section 5093-a5 thereof, provides:

"Neither this act nor any of its provisions shall apply to foreign or interstate commerce."

V.

THE IOWA STATUTES DO NOT REQUIRE A DISTRIBUTOR, AS A CONDITION PRECEDENT TO HIS RIGHT TO ENGAGE IN INTERSTATE COMMERCE, TO PAY A LICENSE FEE TO THE STATE OF IOWA.

a. The license fee imposed by the Iowa statutes on motor vehicle fuel used in the state, is not an occupation tax levied against the distributor for the privilege of engaging in business as a distributor.

Authority:

Section 5093-a1, Code 1931.

1. Distributors are required to take out a permit but no charge is made therefor.

Section 5093-a4, Code, 1931.

b. If the license fees of three cents per gallon were an occupation tax, there would be no burden on interstate commerce because a distributor, as defined by the Iowa statute, is one who has motor vehicle fuel in this state FOR USE IN THE STATE OR FOR SALE FOR USE IN THE STATE. No burden would, therefore, be imposed on one engaged in interstate commerce.

Authority:

Section 5093-a2, defining a distributor.

c. If the law attempted to impose a burden on interstate commerce, by taxing sales outside the state, the only relief Appellant would be entitled to would be an injunction restraining the enforcement of the law on that interstate business.

Authority:

Bowman vs. Continental Oil Co., 256 U. S. 642.

d. But no such injunction would be justified in this case because it is conceded that no effort is made to enforce the law on that type of business.

Authority:

Appellant's Brief, page 74.

e. The incidental burden required of a person engaged in both domestic and interstate business to separate the domestic transaction from the interstate transaction for purposes of taxation, does not prevent the state from taxing the domestic business and is not a regulation of interstate commerce.

Authority:

Bowman vs. Continental Oil Co., 256 U. S. 642, and cases there cited.

f. The cases cited by Appellant holding that a tax imposed upon dealers as an occupation tax is not transformed into a consumers tax by a provision for the posting of a price placard, have no application to a situation like that in the case at bar where the tax is imposed against the consumer.

g. Provision may be made for the payment of taxes by persons other than those against whom it is levied. All collections of taxes at the source are of that nature. The right to collect from a corporation taxes levied against its stockholders has been recognized.

Authorities:

City National Bank vs. Kentucky, 217 U. S. 443.
Clement National Bank vs. Vermont, 231 U. S. 120.
Pierce Oil Co. vs. Hopkins, 284 U. S. 137.

h. The tax being one levied against use, and the object of the tax being to raise funds for road improvement, there

can be no constitutional objection to exempting (by means of refund) of the motor vehicle fuel used for purposes other than the operation of motor vehicles on the highways.

VI.

THERE IS NO DISCRIMINATION UNDER THE IOWA STATUTE BETWEEN MOTOR VEHICLE FUEL IMPORTED INTO THE STATE AND MOTOR VEHICLE FUEL MANUFACTURED OR COMPOUNDED WITHIN THE STATE, AND IF THERE WAS COMPLAINANT IS IN NO POSITION TO RAISE THAT QUESTION.

a. The tax is levied against all motor vehicle fuel used or otherwise disposed of within the state without reference to whether it came in from outside the state or was produced within the state.

Authority:

Section 5093-a1, Code, 1931.

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1. Distributors are required to report and pay on all motor vehicle fuel received from outside the state, or manufactured or compounded from materials brought in from outside the state. This is all the motor vehicle fuel

within the state, as there are no products of the state from which motor vehicle fuel can be manufactured or compounded.

2. If there were motor vehicle fuel in the state produced from materials found in the state, such fuel when used in Iowa would still be taxable under the provisions of Section 5093-a1. At most, all that can be claimed is that, while the distributor pays to the state the tax on the fuel distributed by him for domestic use and collects the amount thereof from purchasers from him, the user pays the tax on motor vehicle fuel not handled by distributors. This Court has held that that is proper.

Authority:

Gregg Dyeing Co. vs. Query, 286 U. S. 472.

b. Appellant is in no position to raise the question of discrimination because if there has been discrimination as claimed, such discrimination was in favor of Appellant as the only one who ever refined motor vehicle fuel in Iowa.

VII.

THE APPELLANT IS ESTOPPED FROM QUESTIONING THE CONSTITUTIONALITY OF THE IOWA STATUTES IMPOSING MOTOR VEHICLE FUEL LICENSE FEES.

a. Appellant filed its report and paid these license fees

over a period of years knowing that at the time the state, or its subdivisions, were incurring an indebtedness of about $100,000,000 in reliance upon the revenue from the motor vehicle fuel taxes to retire the indebtedness.

b. The Appellant has collected from the persons to whom it sold motor vehicle fuel, the amount of the license fees imposed by the Iowa statutes and now holds those fees; it cannot use the Iowa statutes as a means of collecting three cents per gallon in addition to the purchase price from purchasers of motor vehicle fuel as taxes due the state and then keep the fund by asserting the statutes are unconstitutional.

Authority:

Note 19 Ann. Cas. 175.

ARGUMENT

I.

FINDINGS OF FACT BY THE TRIAL COURT ARE BINDING ON APPEAL WHERE THERE IS ANY EVIDENCE TO SUSTAIN THEM.

The trial Court in this case filed rather elaborate and complete findings of fact and we desire to call attention at the outset to the generally accepted proposition that these findings of fact are, on appeal, presumed to be correct and

will be accepted by the appellate Court as facts established in the case unless they are clearly without support in the evidence. The following are statements of the rule by recognized authorities:

> "The general presumption on appeal is in favor of the findings of fact made by the lower Court."
> 4 C. J., 775.

> "In weighing the evidence (by the appellate court) consideration must in case there was oral evidence be given to the decision of the trial Court which is naturally in a better position to pass on the credibility of the witnesses, and all reasonable presumptions are to be indulged in favor of the correctness of its findings which will not be disturbed unless in the light of such rule it is so clearly contrary to the preponderance of the evidence as to produce in the minds of the reviewers a conviction amounting to a reasonable certainty that it is wrong, or unless the finding is plainly, flagrantly or indisputably against the evidence."
>
> 2 R. C. L., p 203.

In further support of this proposition reference is made to the following cases:

> *Parkinson vs. Thompson*, 164 Ind., 609, 73 N. E. 103, 3 Ann. Cas. 677;
> *Chase vs. Hinkley*, 126 Wis. 75, 105 N. W. 230.

In view of this rule and the further fact that no effort is made by Appellant to demonstrate that the trial Court's findings of fact are incorrect, such findings must be accepted as a verity on this appeal.

II.

THE PRESUMPTION IS ALWAYS IN FAVOR OF THE CONSTITUTIONALITY OF LEGISLATIVE ENACTMENTS AND SUCH ENACTMENTS WILL NOT BE DECLARED UNCONSTITUTIONAL UNLESS SUCH UNCONSTITUTIONALITY CLEARLY APPEARS.

It has always been the rule to declare legislative enactments constitutional if it is possible to reconcile them with the provisions of the Constitution; and where more than one interpretation of language of state statute is possible, that interpretation will be adopted which makes for constitutionality.

Ruling Case Law states the rule thus:

> "It is an elementary principle that where the validity of a statute is assailed and there are two possible interpretations by one of which the statute would be unconstitutional and by the other it would be valid, the Court should adopt the construction which would uphold it."
> 6 R. C. L., Section 77.

This Court in a case involving the constitutionality of a statute of the State of Illinois, used the following language:

> "If the object and effect of the sections were in irreconcilable conflict with the acts of Congress they would of course be invalid. But it is a rule of construction that a statute must be interpreted so as, if possible, to make it consistent with the Constitution and the paramount law. *Parsons vs. Bedford*, 3 Pet. 433; Grenada County

Supervisors vs. Brogden, 112 U. S. 261; *Marshall vs Grimes*, 41 Mississippi, 27. If we yielded to this contention of the plaintiff in error we should render the sections invalid by giving them a strained construction, which would make them antagonistic to the law of Congress. We cannot attribute to the legislature, unless compelled to do so by its plain words, a purpose to pass an act in conflict with an act of Congress on a subject over which Congress is given authority by the Constitution of the United States."

Presser vs. Illinois, 116 U. S. 252 at 269.

And this Court has said:

"The elementary rule is that every reasonable construction must be resorted to, in order to save the statute from unconstitutionality."

Hooper vs. California, 155 U. S. 657.

To the same effect see

Knights Templars' & Masons' Life Indemnity Company vs. Jarmen, 187 U. S. 197;
Harriman vs. Interstate Commerce Commission, 211 U. S. 407;
United States vs. Delaware & H. Co., 213 U. S., 366.

It seems clear, therefore, that this Court should not hold a state statute void for unconstitutionality unless the terms of said statute present an irreconcilable conflict with the provisions of the Constitution of the United States, and that conflict clearly appears.

III.

THE ACTION BY COMPLAINANT (Appellant) IN EQUITY FOR INJUNCTIVE RELIEF ONLY IS NOT MAINTAINABLE.

Aside from the merits of this case, there are four reasons why the action is not maintainable and the Appellant is not entitled to the injunctive relief for which it prays.

1. Adequate Remedy at Law

The first reason is that no sufficient grounds for equitable jurisdiction appears, or in other words, complainant has a plain, speedy and adequate remedy at law. Attention is called to the fact that aside from the general proposition that equity will not grant relief where there is an adequate remedy at law, this Court is confronted with a specific statutory direction on the subject, being Section 267 of the Judicial Code or 28 U. S. C. A., Section 384, which is as follows:

> "Suits in equity, when not sustainable. Suits in equity shall not be sustained in any Court of the United States in any case where a plain, adequate, and complete remedy may be had at law."

Almost the identical proposition on this point was before this Court in a case arising in Idaho where a water works company had placed its property and equipment in the streets of the city in pursuance of an ordinance granting it permission to do so for a period of fifty years. At the expiration of three years the ordinance was changed and a new ordinance en-

acted imposing upon the water works company the obligation to pay $300.00 a month for the privilege of using the streets, the city taking the position that the first ordinance was merely a license which was revocable at any time and that it was revoked by a subsequent ordinance and the city brought suit at law to collect the monthly fee from the water works company. After the institution of the suit the water works company filed a petition in the federal Court asking for an injunction against the city restraining the enforcement of the second ordinance on the ground that it invaded the rights of the water works company guaranteed by the Constitution of the United States, and in dealing with that situation and the right of the complainant in that case to maintain the suit, this Court said:

> "It is obvious that the rights of which the company seeks to avail itself are rights cognizable in a Court of law, and not rights created only by the principles of equity. The sum of the company's contentions is that the imposition of the license fee was illegal, unconstitutional and void. All these contentions are open in a Court of law. It is a guiding rule in equity that in such a case it will not interpose where there is a plain, adequate and complete remedy at law. This rule at an early date was crystallized into statute form by the sixteenth section of the Judiciary Act (Revised Statutes, 723), which, if it has no other effect, emphasizes the rule and presses it upon the attention of Courts. *New York & Co. vs. Memphis Water Co.*, 107 U. S. 205, 214. It is so well settled and has so often been acted upon that no authority need be cited in its support, though it must not be forgotten that the legal remedy must be as complete, practicable and efficient as that which equity could afford. *Walla Walla vs. Walla Walla Water Co.*, 172 U. S. 111.
>
> "A notable application of the rule in the Courts of the United States has been to cases where a demand has

been made to enjoin the collection of taxes or other impositions made by state authority, upon the ground that they are illegal or unconstitutional. The decisions of the state Courts in cases of this kind are in conflict, and we need not examine them. It is a mere matter of choice of convenient remedy for a State to permit its Courts to enjoin the collection of a state tax, because it is illegal or unconstitutional. Very different considerations arise where Courts of a different, though paramount, sovereignty interpose in the same manner and for the same reasons. An examination of the decisions of this Court shows that a proper reluctance to interfere by prevention with the fiscal operations of the state government has caused it to refrain from so doing in all cases where the Federal rights of the persons could otherwise be preserved unimpaired. It has been held uniformly that the illegality or unconstitutionality of a state or municipal tax or imposition is not of itself a ground for equitable relief in the Courts of the United States. In such a case the aggrieved party is left to his remedy at law, when that remedy is as complete, practicable and efficient as the remedy in equity. And the rule applies as well where the right asserted is by way of defense. *Insurance Co. vs. Bailey*, 13 Wall. 616, 623.

"In order to give equity jurisdiction there must be shown, in addition to the illegality or unconstitutionality of the tax or imposition, other circumstances bringing the case under some recognized head of equity jurisdiction, before the remedy by injunction can be awarded. The leading case on the subject is *Dows vs. Chicago*, 11 Wall. 108. In that case the plaintiff sought to enjoin the collection of a tax levied upon shares of the capital stock of a national bank on the ground that the levy was unconstitutional under the state law, and that the property was not within the jurisdiction of the State. This Court declined to pass upon the validity of the tax, saying, through Mr. Justice Field (p. 109):

" 'The illegality of the tax and the threatened sale of shares for its payment constitute of themselves alone no

ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common tresspass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked. It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible.' "

Boise Artesian Water Co. vs. Boise City, 213 U. S., 276 at 281.

What is said by this Court in the quotation above is equally applicable to the case at bar and the rule thus announced is supported by other cases from this Court and reference is made to the following:

U. S. vs. Bitteroot Dev. Co., 200 U. S., 451;
Southern Pacific Railroad Co. vs. United States, 200 U. S., 341;
Buzard vs. Huston, 119 U. S., 347;
Wehrman vs. Conklin, 155 U. S., 314;
N. Y. Guaranty & Indemnity Co. vs. Memphis Water Works Co., 107 U. S. 205;
Warmath vs. O'Daniel, 159 Fed. 87, 16 L. R. A. (N. S.) 414;
Grand Chute vs. Winegar, 15 Wall. 373, 21 L. Ed. 174;
Phoenix Mutual Life Insurance Co. vs. Bailey, 13 Wall. 616, 20 L. Ed. 501;
Bronson vs. Cook, 247 Fed. 601, 14 R. C. L. 399.

It will be recalled that in the case at bar, an action at law had been instituted by the state for the license fees in

controversy and that it was to prevent the prosecution of that suit on the ground that the statutes on which it was based were unconstitutional and void that this suit was brought. In other words, the matters herein alleged as grounds for an injunction could properly be urged as a defense in the action previously commenced. Under those circumstances, equity will not grant an injunction. The rule is well expressed in Corpus Juris as follows:

> "Relief will be denied to a person who seeks the aid of a Court of equity against pending or threatened proceedings at law where it appears that the matters relied upon are such that if established would constitute a defense in the law action and where the plaintiff's right will be fully protected by a successful defense. That is, where no wrong is threatened beyond the assertion of the legal demand open as it is to such defense."
> 21 C. J. 68.

It is claimed by Appellant in support of the claim of equity jurisdiction that complainant's license had been revoked and that it became subject to great penalties. The trouble with this contention is that it is not sustained by the facts.

In the first place, there is no provision in the Iowa statutes whatever imposing a penalty upon a distributor doing business without a license. It is provided in Chapter 251-A1 and in Section 5093-a4 thereof, that a distributor shall, before beginning the sale or manufacture of motor vehicle fuel, file a certificate with the treasurer of state, which statement is in the nature of an application for a license. It also provides that he shall procure the license. Section 5093-c2 requires that he furnish bond or other security to the state. Section 5093-a5 requires certain reports to be made to the

state. The only penalty provision in the act is found in Section 5093-a7, which is as follows:

> "Misdemeanor-penalty. Any distributor railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificate to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices or equipment of such distributor pertaining to the sale of motor vehicle fuel, or who shall make any incomplete, false or fraudulent return hereunder, or shall in any manner violate the provisions of Sections 5093-a4, 5093-a5, and 5093-b1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor."

It will be noticed from the foregoing that the only acts of the distributor which subject him to a penalty is his refusal "to make the reports or certificate to the treasurer as herein prescribed or shall refuse to permit the treasurer to examine the books, papers, receipts, invoices or equipment of such distributor pertaining to the sale of motor vehicle fuel, or who shall make any incomplete, false or fraudulent return hereof or shall in any manner violate the provisions of Sections 5093-a4, 5093-a5 and 5093-b1 hereof."

Said section further provides that upon conviction, he shall be fined not less than one hundred dollars nor more than five hundred dollars.

It is submitted that it is questionable whether, under this act, if a distributor has filed the certificate required by the act and has filed the security required by the act and makes his report as required by the act, he could be subjected to the penalties of the act for doing business without a license. But however that may be, it is undisputed in this case that no proceedings, criminal or otherwise, were contemplated or pending against the complainant on account of its continuing to do business without a license. The officers of the state testified at the trial and the trial Court found it as a fact that the state intended to take no proceedings to interfere with the business of the complainant until the Courts had finally determined the amount of motor vehicle fuel taxes owing by the complainant and the complainant had refused to pay them.

The trial Court found the facts with reference to that matter as follows:

> "12th. The officers of the state of Iowa have no intention of further law actions or criminal actions against the Mona Motor Oil Company until the present litigation is terminated and the rights of the officers in the collection of the tax determined by the Courts in the present proceedings." Tr. p. 130.

And attorneys for Appellant on the trial conceded the only purpose of this suit was to restrain the state from maintaining its suit in the state Court against the Mona Motor Oil Company. The present State Treasurer as a witness was being cross-examined by one of the attorneys for complainant (Appellant) and inquired as to whether this suit was being prosecuted to determine whether the state was within its rights

in prosecuting the suit in the state Court, and the answer was: "I think so." Transcript p. 204.

In view of that state of the record and that finding of the Court there can be no justification for invoking equitable jurisdiction.

b. Concurrent Jurisdiction

The second reason why the suit is not maintainable is that it involves the same questions which are properly involved in the suit started by the state against the Mona Motor Oil Company in the state Court claiming license fees on motor vehicle fuel due the State of Iowa, and it is well settled that as between Courts of concurrent jurisdiction the Court which first obtains jurisdiction will be allowed to exhaust it.

The following quotations are submitted as correct statements of the rule:

> "It is a familiar principle that, when a Court of competent jurisdiction acquires jurisdiction of the subject matter of a case, its authority continues, subject only to the appellate authority, until the matter is finally and completely disposed of; and no Court of co-ordinate authority is at liberty to interfere with its action."
>
> 7 R. C. L., 1067.
>
> "In a great number of instances the federal and state Courts have concurrent jurisdiction. Generally, whenever a legal right arises and the state Court is competent to administer justice, the right may be asserted in such Court, although the federal Court may have concurrent

jurisdiction unless the jurisdiction is limited by law to the federal Courts."

15 C. J., 1155, Section 634.

And again

"Where a state and federal Court have concurrent jurisdiction over the same parties or privies and the same subject matter, the tribunal where jurisdiction first attaches retains it exclusively, and will be left to determine the controversy and to fully perform and exhaust its jurisdiction and to decide every issue or question properly arising in the case."

15 C. J. 1161, Section 637.

It will hardly be contended that the question as to whether or not the Mona Motor Oil Company owes any motor vehicle fuel tax to the State of Iowa does not depend upon the constitutionality of its law imposing the tax; and it will hardly be contended either, that all provisions of the Constitution of the United States, as well as the State of Iowa, are binding upon the state court the same as they are upon this and every other court within the jurisdiction of the United States. The only effect and the only purpose in instituting this action is to have determined the very questions which are not only properly but necessarily involved in the suit previously commenced against complainant in the State Court. In other words, the practical effect of the maintenance of this suit was to transfer the determination of those questions from the Court in which the action was pending to the federal court. And this, too, when the suit in the state court was brought by the State of Iowa against the Mona Motor Oil

Company and the removal of the case was sought and denied because of the fact that there was no diversity of citizenship on account of the state being a party to the suit.

In view of this situation, it is respectfully urged that the case at bar is not maintainable and the complainant (Appellant) should not be granted the injunction for which it prays.

c. Suit Against the State

The third reason why the suit is not maintainable is that it is in effect a suit against the state and its maintenance would be in violation of the Eleventh Amendment to the Constitution of the United States. We are well aware of the fact that under some circumstances federal courts will take jurisdiction of a suit against state officers to enjoin the enforcement of a state statute on the ground that the statute contravenes provisions of the Constitution of the United States. But we are equally well aware of the fact that the constitutionality of state statutes cannot be tested in that way in every case and that certain conditions must exist as a basis for federal jurisdiction and as grounds for distinguishing the case as being a suit against the officers of the state rather than the state itself.

The rule has been repeatedly stated by this Court and in the cases of *Re Ayers*, 123 U. S. 443, and *Fitts vs. McGhee*, 172 U. S., 516, relief was denied on the ground that it was a suit against the state.

In the case of *Ex parte Young*, 209 U. S. 123, the right

to maintain the suit against the Attorney General of the State of Minnesota was recognized by a divided Court but the basis of the Court's jurisdiction was clearly stated. It is recognized in that case and in every case by this Court where the matter has been discussed, that there must be present in the case some action by the officers of the state which would be illegal and a tresspass upon rights guaranteed to the complainant by the Constitution of the United States such as would justify an injunction against them as individuals before a Court will entertain jurisdiction in such a case. The suit then becomes one against the individual officers restraining them from injuring rights of the complainant and it is very possible and proper to say that in such a case the suit is against the officers rather than against the state. The trial Court quoted the rule from a recent opinion of this Court as follows:

> "The District Court had jurisdiction. The suit is not against the state. The applicable principle is that where state officials purporting to act under state authority invade rights secured by the Federal Constitution they are subject to the process of the federal courts in order that the persons injured may have appropriate relief."
>
> *Sterling et al, vs. Constantin*, 287 U. S. 378.

We have no quarrel with this statement of the rule but we do desire to inquire what rights of complainant, secured by the Federal Constitution, were invaded by the state officers in this case. Surely, it cannot be claimed that the institution in a perfectly lawful manner of a suit in the state Court asking for the enforcement of a statute and for a money judgment for an amount alleged to be due in accordance with the terms of the statute was any invasion of the rights of complainant guaranteed by the Constitution of the United States. There

must be something more than that. There must be something in the nature of a tresspass upon the rights of the complainants or an interference with their liberty, or their person, or their property before there is a situation which makes the suit one against the officers rather than one against the state itself.

It will be borne in mind that in this case the criminal prosecutions which had been initiated against the Mona Motor Oil Company and its officers had all been terminated before the case at bar was instituted, and that at the time the case at bar was instituted no criminal prosecutions were pending or threatened and that that fact was found by the trial Court.

It should further be borne in mind that there was no seizure of the property of the Mona Motor Oil Company and no attempt to interfere with the complete liberty of the Mona Motor Oil Company to have the possession, enjoyment and use of all its property, both personal and real, and there was no threat to prosecute or in any way to interfere with the liberty or freedom of action of the agents and employees of the Mona Motor Oil Company. The criminal prosecutions were all over before this action was commenced. In other words, there was no invasion of rights of the Mona Motor Oil Company secured by the Federal Constitution and nothing which would justify an injunction against the officers of the state restraining them as individuals from invading rights of the Mona Motor Oil Company secured by the Constitution of the United States and nothing, therefore, which would justify an attempt to distinguish this case as a case against the officers of the state rather than a case against the state itself. Under such circumstances, it is submitted that the

case must be regarded as one against the state and its maintenance in violation of the clear and plain provisions of the Eleventh Amendment to the Constitution of the United States which prohibits suits in the federal court against any state by a citizen of another state.

d. Restraing Suit in State Court Prohibited

The fourth reason why the suit cannot be maintained is that the suit is expressly prohibited by the terms of the federal statute. Section 265 of the Judicial Code is as follows:

> "The writ of injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."
>
> 28 U. S. C. A., Section 379.

It will be recalled that this suit was commenced against the state officers asking for an injunction against them restraining them from enforcing the motor vehicle fuel tax laws of the State of Iowa at a time when the only thing the officers were doing, and the only thing they were contemplating doing, was the prosecution of the action at law previously commenced in the state court for a money judgment in accordance with the terms of the statute. And the only effect of granting the injunction would be to restrain prosecution of that action in the state court, and it is submitted that such an injunction would directly violate the above quoted section of the Judicial Code. It will be observed from the opinion of the

Court below, and particularly from the part thereof appearing at the bottom of page 91 and top of page 92 of the Transcript, that it was held that the suit was not maintainable on account of this provision of the statute and that the only reason the Court was constrained to proceed with an examination of the constitutionality of the statute was because of the fact that other cases involving the same question were pending and it was thought desirable that that question should be passed upon.

The trial Court in its findings and on page 92 of the Transcript said:

> "We are, therefore, expressly enjoined from interfering in any way with the proceedings now pending in the state court by the state or its officers in this case involving the same parties and the same subject matter."

The Court in its findings of fact and conclusion of law further said:

> "11th. That to grant the relief asked by the complainant in this case would interfere with the proceedings in the state court by injunction, prohibited by the Judicial Code."

Transcript p. 132.

Appellant in this case takes no exception to that finding and predicates no error upon that statement of the trial Court. Under such circumstances it is difficult to see how the correctness of the trial Court's ruling on that point is before this Court for review, and since the injunction for which Appellant prayed in this case could not be granted

without restraining the prosecution of that suit, and since the only purpose which the injunction would serve would be to restrain the prosecution of that suit, it is difficult to see how it can be claimed that there was error in the trial Court's refusal to grant the injunction prayed for by Appellant below on that ground.

IV.

THE IOWA STATUTES LEVYING MOTOR VEHICLE FUEL LICENSE FEES ON MOTOR VEHICLE FUEL USED WITHIN THE STATE DO NOT TAX FUEL IN INTERSTATE COMMERCE AND DO NOT ON THAT ACCOUNT CREATE A BURDEN ON INTERSTATE COMMERCE IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES.

It is claimed by Appellant that the Iowa statute and the manner in which it is administered imposes a tax on motor vehicle fuel in interstate commerce and thereby creates a burden upon interstate commerce in violation of the commerce clause of the Constitution of the United States, and in connection with this claim several different propositions are urged by Appellant and must be considered.

a. TAX LEVIED ON THE USE.

It is claimed by Appellant that the Iowa statutes impose a property tax on motor vehicle fuel and this claim is made as

a necessary premise to the conclusion that the tax is against property imported into the state. This premise, however, can hardly be sustained because the tax is not levied upon property but upon the use of a certain product and is measured by the amount thus used. The language of the section imposing the tax is that a license fee is imposed *on all motor vehicle fuel used or otherwise disposed of within the state.* It was held by the trial Court to be an excise tax upon the use of the product. And Courts quite uniformly have held that taxes imposed upon motor vehicle fuel in that language are excise taxes levied against the use of the product and not a property tax levied against the property itself.

In the case of *Altitude Oil Company vs. People*, 70 Colo. 452, the Court had under consideration the nature of a tax imposed for the purpose of improving the highways. The statute levied the tax on various products of petroleum "offered for sale or used for consumption for power purposes in propelling motor vehicles." The Court after calling attention to the fact that the tax was not levied on all the products but only such as were devoted to a particular purpose and the further fact that it was measured, not by the value of the property but by the quantity used, said:

> "Considering the statute as a whole, we conclude that it imposes an excise tax and not a property tax."

In the case of *Bowman vs. Continental Oil Co.*, 256 U. S., 642, a tax was levied on each gallon of gasoline sold or used within the state. And it was held by this Court that the tax was an excise tax, not a property tax.

In *Standard Oil Company vs. Jones* (S. D.), 205 N. W., 72, a tax was levied amounting to three cents per gallon on all motor vehicle fuel sold or used in the State of South Dakota. Dealers were required to pay the tax. The Court in considering the nature of the tax, decided it was not a property tax. The Court said:

> "A careful study of this act convinces us that the true object and purpose of this act is to tax users of gasoline in the state 3 cents per gallon through the agency of a dealer's tax. Every provision is to effect this result, to avoid any interference with interstate commerce, and to permit of no discrimination. The justice of the tax is in its collection for the construction and maintenance of highways, from the users of such highways, in proportion to the use."

See also

Standard Oil Co. vs. Brody, 157 Ark. 114.

If the tax is levied against the use of the product within the state as an excise, as all the cases dealing with the subject including the cases from this Court hold, and is levied uniformly against all motor vehicle fuel used within the state without reference to its place of origin, it cannot possibly, of course, be claimed that it creates a burden upon interstate commerce.

b. PRODUCTS WHICH MOVE IN INTERSTATE COMMENCE MAY BE TAXED WHEN THEY COME TO REST.

If we treat the tax as one levied against property, for

the sake of the argument, still, there would be no burden created upon interstate commerce for the very obvious reason that distributors, under the provisions of Section 5093-a5, are not required either to report to the state treasurer or pay to the state treasurer any license fee until at least twenty days after the motor vehicle fuel has been unloaded from the tank cars or other receptacles in which it is brought into the state. That section provides that on the twentieth of each calendar month the distributor shall report the motor vehicle fuel received by him during the preceding calendar month, together with date of unloading. So that until said fuel is unloaded there is no liability whatever to report or pay the tax, and there is no liability to report and pay the tax until at least twenty days after said fuel is unloaded. In view of this situation there is no burden on interstate commerce and no attempt to tax fuel while in interstate commerce and no attempt to require the distributor to pay the tax until at least twenty days after the fuel has come to rest in the State of Iowa. Many decisions by this Court are to the effect that when articles moving in interstate commerce come to rest in the state they become subject to the tax laws of that state.

In *American Steel & Wire Co. vs. Speed*, 192 U. S., 500, that question was exhaustively considered by this Court and the rule established by the case is well stated in the syllabus as follows:

> "Goods brought in original packages from another State, after they have arrived at their destination and are at rest within the State, and are enjoying the protection which the laws of the State afford, may, without violating the commerce clause of the Constitution, be taxed without discrimination like other property within the State, although at the time they are stored at a distributing

point from which they are subsequently to be delivered in the same packages, through the storage company to purchasers in various states."

It will be noted that the rule of the foregoing case applies to goods in original packages which is a far more serious question than exists in the case at bar, because in the case at bar there is no requirement that goods be subjected to the tax until the 20th of the calendar month following the calendar month in which they were unloaded from the receptacles in which they moved in Interstate commerce.

In *Sonneborn Bros. vs. Cureton*, 262 U. S. 506, a statute of Texas imposed an occupation tax of two per cent on the gross sales of dealers in certain petroleum products. The question arose as to whether the tax could be collected on sales of oil in Texas by non-resident merchants who had shipped the oil from New York and stored it in their warehouses in Texas and afterwards sold it therefrom in unbroken original packages. In answering that question, Chief Justice Taft, speaking for the Court, said:

"Our conclusion must depend on the answer to the question: Is this a regulation of, or a burden upon, interstate commerce? We think it is neither. The oil had come to a state of rest in the warehouse of the appellants, and had become a part of their stock, with which they proposed to do business as wholesale dealers in the state. The interstate transportation was at an end, and whether in the original packages or not, a state tax upon the oil (509) as property, or upon its sale in the state, if the state law levied the same tax on all oil or all sales of it, without regard to origin, would be neither a regulation nor a burden of the interstate commerce of which this oil had been the subject.

"This has been established so far as property taxes on the merchandise are concerned by a formidable line of authorities: *Brown vs. Houston,* 114 U. S. 622, 29 L. ed. 257, 5 Sup. Ct. Rep. 1091; *Coe vs Errol,* 116 U. S. 517, 29 L. ed. 715, 6 Sup. Ct. Rep. 475; *Pittsburg & S. Coal Co. vs. Bates,* 156 U. S. 577, 39 L. ed. 538, 5 Inters. Com. Rep. 30, 15 Sup. Ct. Rep. 415; *Diamond Match Co. vs. Ontonagon* 188 U. S. 82, 47 L. ed. 394, 23 Sup. Ct. Rep. 266; *American Steel & Wire Co. vs. Speed,* 192 U. S. 500, 520, 48 L. ed. 538, 546, 24 Sup. Ct. Rep. 365; *General Oil Co. vs. Crain,* 209 U. S. 211, 52 L. ed. 754, 28 Sup. Ct. Rep. 475; *Bacon vs. Illinois,* 227 U. S. 504, 57 L. ed. 615, 33 Supt. Ct. Rep. 299."

There can hardly be need for the citation of further authority on a proposition so well established by holdings of this Court.

Since a state has the power by a nondiscriminatory tax to tax products coming into the state when they come to rest in the state, even though in the original packages without creating a burden on interstate commerce, it can hardly be seriously urged that the state is without power to so tax twenty days after they have been removed from the original packages without burdening interstate commerce.

c. IOWA STATUTE DOES NOT COVER FUEL SOLD FOR USE OUTSIDE THE STATE.

It is further urged by Appellant that the act burdens interstate commerce because it applies to motor vehicle fuel sold in interstate commerce, that is, sold for use outside the State of Iowa and to be shipped in interstate commerce. This

claim can neither be sustained by the language of the act nor the manner in which it is administered. The section imposing the tax being Section 5093-a1 does so in these words:

> "A license fee * * * is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever."

The following section in defining a distributor does so in this language:

> "Any person who brings into the state or who produces, refines, manufactures, or compounds within the state any motor vehicle fuel to be used within the state or sold or otherwise disposed of by him within the state for use in the state."

The trial Court held that the tax was imposed, not upon sales, but only upon the use of the product and that the term "otherwise disposed of" did not include sales but only some disposition in the nature of use so that if the tax is imposed only upon motor vehicle fuel USED IN IOWA, as provided by Section 5093-a1, it can have no application to motor vehicle fuel that is sold in Iowa for use in some other state, and no attempt is made by the administrative officers of the state to impose the tax on products sold for use outside the state. Moreover, it will be noticed that a distributor is one who brings into the state or manufactures or produces within the state motor vehicle fuel for use in the state or "to be * * * sold by him within the state for use in the state." It is therefore clear that one who brings into the state or produces within the state, motor vehicle fuel to be sold for use outside the state is not a distributor at all as that term is defined by the

Iowa statute and is not required to either report or pay on such fuel.

The form of report made by distributors to the State of Iowa calls for a deduction of all motor vehicle fuel sold for use outside the state, and distributors make that deduction paying only on motor vehicle fuel sold for use within the state.

It is obvious, therefore, that neither the language of the statute imposing the tax and defining the persons made liable for the payment of the tax, nor the manner in which the tax is administered have any reference to fuel which is sold for delivery and use outside the State of Iowa.

d. INTERSTATE TRANSACTIONS EXEMPT.

It should further be noted that the act specifically exempts transactions in interstate commerce. Section 5093-a5, in the latter part thereof, provides:

> "Neither this act nor any of its provisions shall apply to foreign or interstate commerce."

It is apparent that all transactions in interstate commerce are by the language of the act, as above quoted, and the manner in which it is administered, as previously described in this brief, exempt from the operation of the act.

V.

THE IOWA STATUTES DO NOT REQUIRE A DISTRIBUTOR, AS A CONDITION PRECEDENT TO HIS RIGHT TO ENGAGE IN INTERSTATE COMMERCE, TO PAY A LICENSE FEE TO THE STATE OF IOWA.

In the preceding division of this argument, we have attempted to show that there is no burden on interstate commerce created by the motor vehicle fuel tax laws of the State of Iowa, because of the tax being a property tax imposed upon property in interstate commerce, and that the statute has no application to motor vehicle fuel sold for delivery outside the state, and that under the terms of the statute, all transactions in interstate commerce are exempt. It is claimed, however, by Appellant that the Iowa statute in question is a burden on interstate commerce because it requires a distributor to secure a license or permit and to pay the gallonage tax on all motor vehicle fuel distributed without reference to whether such business is a purely domestic business or an interstate business. In other words, it is Appellant's claim, as set out commencing on page 68 of its argument, as we understand it, that a distributor is required to take out a permit and pay license fees to the State of Iowa as a condition precedent to his being permitted to engage in interstate commerce. If this is true, of course, it constitutes a serious indictment against the law, but we submit that it cannot be sustained either by the provisions of the statute or the manner in which it has been interpreted and is being administered by the officers of the state.

To support Appellant's claim at this point, it is of course

necessary for it to urge that the motor vehicle fuel tax law of the State of Iowa is, in fact, an occupation tax imposed upon the distributor for the privilege of engaging in that kind of business, and that the tax so imposed is measured by the amount of gallons handled by such distributor. We quote from page 68 of Appellant's Argument:

> "The tax is not upon the gasoline as it comes to rest, but is on the privilege of the distributor to do business. Where the distributor is exporting the gasoline to another state, the license fee nevertheless must be paid by him. On this interstate business the license fee is levied indiscriminately on the distributor regardless of interstate and intrastate business."

This statement is a little shocking in view of Appellant's statement in Point II in its specification of error appearing on page 30 of its printed brief. It is there asserted that Chapter 251-A1

> "undertakes to levy a 2 cent tax per gallon on imported gasoline or imported motor vehicle fuel, it is a tax on such imported property and as such on imports."

Both contentions of Appellant, of course, cannot be true. If the tax is a property tax levied on gasoline or motor vehicle fuel it cannot be an occupation tax levied against the distributor for the privilege of engaging in business as such distributor. The situation strongly suggests that Appellant is not quite settled in its own mind as to what is the matter with these Iowa statutes. It seems certain of one thing only, and that is that there must be something wrong with them, and it is perfectly willing to advance inconsistent assaults

upon the statutes in the hope that it may discover something that has merit in it.

The claim that the Iowa motor vehicle fuel tax is an occupation tax levied against distributors is utterly without support. We have already called attention to the fact in preceding divisions of this argument as to the nature of this tax and that it is an excise tax levied upon the use of motor vehicle fuel. There is not a word in the statutes imposing the tax upon the distributor, the tax is imposed upon the user. At the risk of repeated repetition, we quote the provisions of Section 5093-a1 again:

> "A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid."

Moreover, even though the tax were an occupation tax, it is very doubtful whether the statute would be subject to the criticism which Appellant levels against it because in defining the term "distributor" the legislature was very careful to limit it to a person doing a purely domestic business. A distributor is defined by Section 5093-a2 of the act as being

> "any person who brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be used within the state or sold or otherwise disposed of by him within the state for use in the state."

It will be noticed that a distributor is not defined as any

person who imports motor vehicle fuel, as Appellant contends. On the contrary, a distributor, according to this statute, is one who has motor vehicle fuel in this state, either imported from outside the state or produced within the state, and who has such fuel for the purpose of use within the state or for sale for use within the state. This clearly and unmistakably eliminates the one who merely imports motor vehicle fuel, and when the word "imported" is used in this argument, it has reference to an interstate shipment from another state into this state rather than imports in its more technical meaning.

It is obvious also that this definition eliminates as distributors those who have motor vehicle fuel for sale outside the state of Iowa. In other words, a resident of Iowa could receive into this state from outside the state and sell in this state for delivery outside the state; or in other words, could carry on an interstate distributing business without coming within the terms of the definition of a distributor as contained in the statute at all. It follows that since a distributor is one who carries on a domestic distributing business as distinguished from an interstate business, as that term is defined in the Iowa statute, there is no merit in the claim that the license fees are exacted by the State of Iowa as a condition precedent to the right of a distributor to engage in interstate commerce.

Counsel for Appellant concede that the manner in which the law is being administered does not create any burden upon interstate commerce. We quote from page 74 of Appellant's printed Brief:

"But the state officers say, 'We give you credit for all

gasoline used in Nebraska.' Where is the provision in the law for such a credit?"

And the Appellant proceeds to argue that it is what may be done under the law which makes it bad rather than what is actually done under it.

As to Appellant's question in the above quotation as to where the authority is for giving credit to distributors for sales made by them of motor vehicle fuel for use in Nebraska, it is sufficient to say that there is no authority in the law for levying the tax. It was heretofore pointed out that the tax is levied by Section 5093-a1 against motor vehicle fuel used in Iowa, and a distributor, as defined in Section 5093-a2, is among other things, one who sells motor vehicle fuel for use in Iowa and if it is sold by a distributor for use in Nebraska, then in the making of that transaction the seller is not acting as a distributor at all.

The case of *Bowman vs Continental Oil Company*, 256 U. S. 642, decided by this Court, it seems to us disposes of this whole proposition. In that case an excise tax of two cents per gallon was imposed upon the sale or use of gasoline, and in addition, dealers in gasoline were required to be licensed and pay a license fee of $50.00. The machinery of the statute was, as will be observed, very similar to that set up in the case at bar. Under the statute in question in the instant case, provision is made for distributors to secure a permit or license but no charge is made for such license, and an excise tax is levied on the use of motor vehicle fuel. In the Bowman case supra, it was decided that the requirement with reference to licensing dealers applied to dealers engaged in interstate

business as well as domestic business, and could not, therefore, be enforced but that the excise tax levied against domestic sale or use did not interfere with interstate commerce and could be enforced. The Court said:

> "Assuming that, upon the question of construction, the District Court was right, and that the act manifests an intent to tax interstate as well as domestic transactions in gasoline, and is not in this respect capable of separation, still, so far as the excise tax is concerned, imposed as it is upon the sale and use of gasoline according to the number of gallons sold and used, the divisible nature of the subject renders it feasible to control the operation and effect of the tax so as to prevent it from being imposed upon sales in interstate commerce, while allowing the State to enforce it with respect to domestic transactions; and with the allowance of an injunction limited accordingly plaintiff will receive the full protection to which it is entitled under the Constitution of the United States. The applicable rule is that laid down in *Ratterman vs. Western Union Telegraph Co.*, 127 U. S. 411, where, in response to a question whether a single tax, assessed by a state upon the receipts of a telegraph company derived partly from interstate commerce and partly from commerce within the State, but returned and assessed in gross and without separation or apportionment, was wholly invalid or invalid only in proportion and to the extent that the receipts were derived from interstate commerce, this Court unanimously answered that so far as levied upon receipts derived from interstate commerce the tax was void, but so far as levied upon receipts from commerce wholly within the State it was valid. This case has been cited repeatedly with approval and its principle accepted. *Western Union Telegraph Co. vs. Alabama*, 132 U. S. 472, 476-477; *Lehigh Valley R. R. Co. vs. Pennsylavania*, 145 U. S. 192, 200-201; *Postal Telegraph Cable Co. vs. Charleston*, 153 U. S. 692, 697; *Western Union Telegraph Co. vs. Kansas*, 216 U. S. 1, 31.
>
> "But with the license tax it is otherwise. If the statute is inseparable, then both by its terms and by its legal

operation and effect this tax is imposed generally upon the entire business conducted, including interstate commerce as well as domestic; and the tax is void under the authority of *Leloup vs. Port of Mobile*, 127 U. S. 640, 647; *Crutcher vs. Kentucky*, 141 U. S. 47, 58-59; *Williams vs. Talladega*, 226 U. S. 404, 419; and other cases of that character."

And further the Court said:

"No doubt the State might impose a license tax upon the distribution and sale of gasoline in domestic commerce if it did not make its payment a condition of carrying on interstate or foreign commerce. But the State has not done this by any act of legislation."

It is clear from this case that even if the Iowa statute required a license fee for a permit to engage in business, which it does not, and even though the permit was required of those who engage in interstate business as well as a domestic business, which is not, still the only thing the Court could properly do about it would be to restrain the state officers from enforcing the provisions with reference to requiring permits of distributors. The question of the obligation to pay the excise tax on the motor vehicle fuel used in the state would not be affected, and that is the only thing in dispute here.

It is submitted that the definition of a distributor as provided in the Iowa statute includes only distributors doing a domestic business and has no application to interstate business. And further, that if it did, it would not under the authority of the Bowman case, affect or interfere with the obligation to pay the excise tax on the domestic business.

The most that could possibly be claimed by Appellant is that a distributor if engaged in an interstate as well as a domestic business, is required to report his sales outside the State of Iowa, and that such reporting is a burden on interstate commerce. But state laws are not held to violate the commerce clause of the Constitution because they incidentally affect interstate commerce. *East Ohio Gas Co. vs. Tax Commission*, 283 U. S. 465. The inspection laws are good illustrations of that fact. And finally this Court held in *Bowman vs. Continental Oil Co.* 256 U. S. 642, and the cases therein cited, that if a tax is levied on all tranactions both domestic and interstate, that it will be enforced as to the domestic transactions, although void as to the interstate transactions, which means that the taxpayer can be required to separate them for the purposes of taxation, and that is all at most, required by the Iowa statute of a distributor, who in addition to being a distributor within the meaning of the statute, is also engaged in interstate commerce. That may be an incidental interference with interstate commerce, but it is not a regulation of interstate commerce.

Appellant cites a number of cases in support of the proposition that the license fees are levied as a condition precedent to the right to do an interstate business. The case of *Bowman vs. Continental Oil Co.*, 256 U. S. 645, has already been discussed. The other cases cited fall far short of sustaining Appellant's contention. A brief reference to those cases will show they are inapplicable to the facts in the case at bar.

In *Furst vs. Brewster*, 282 U. S. 493, cited by Appellant, a statute of the State of Arkansas provided in substance that

no foreign corporation could recover a judgment in the Courts of the state unless it complied with a state statute requiring it to file a statement of its assets and liabilities and designated an agent for the service of process. The question arose as to whether a debt due an Illinois corporation under a contract to furnish goods from its warehouse in Tennessee to a resident of Arkansas could be enforced in the state Courts of Arkansas. It was held that a state statute attempting to prevent the enforcement of the right to payment for the goods was a burden on interstate commerce, that the right to collect for the transaction was a part of the transaction itself, and could not be taken away without creating a burden on the interstate transaction.

That question is not in the case at bar and there is nothing in the case at bar comparable to it.

In the *Eureka Pipeline Co. vs. Hallahan*, 257 U. S., 265, relied upon by Appellant, the question was whether the state of West Virginia could levy an occupation tax on the pipeline company measured by the amount of oil flowing through the pipes.

Held that as applied to oil flowing in interstate commerce, the statute was void as a burden on interstate commerce. The opinion was by a divided Court, the minority taking the view that the movement of the oil in question through the pipeline, under the circumstances, in the particular case, was intrastate business rather than interstate business. The rule of the case is that a state cannot levy an occupation tax against a pipeline operator measured by the flow of oil through the pipe line in interstate commerce. The

correctness of that rule is conceded. But it applies to an occupation tax measured by the volume of oil flowing in interstate commerce. No such situation exists in the case at bar.

In *East Ohio Gas Co. vs. Tax Commission*, 283 U. S. 465, cited by Appellant, the question was whether a state had a right to levy a consumption tax on gas which came into the state through an interstate pipe line having a direct connection with the gas consuming devices in the state, and through which gas flowed in a continuous flow from outside the state to the consuming devices. It appeared, however, that when the gas was pumped into local mains for distribution to consumers, its pressure was reduced and it was in a sense, taken out from the main flow of gas in the main interstate pipe line and isolated for local consumption.

Held that the consumption tax was valid, and that when the gas was delivered into the pipe lines of the consuming city or community, it was no longer in interstate commerce and was subject to the tax.

It is a little difficult to see why Appellant would cite this case. If gas in the cited case becomes subject to tax when it enters the pipe lines of the consuming community, then certainly motor vehicle fuel may be subjected to the tax twenty days after it is unloaded into bulk tanks in the consuming state.

In *Ozark Pipe Line Co. vs. Monier*, 266 U. S., 555, the Ozark Pipe Line Company operated a pipe line through which oil was transported to Illinois from Oklahoma and Kansas

through Missouri. No oil was received in Missouri nor delivered there. The State of Missouri attempted to levy a franchise tax against all foreign conporations engaging in business in Missouri equal to one-tenth of one per cent of the par value of its capital and surplus employed in business in Missouri, and for the purpose of the tax to deem as employed in Missouri

> "that proportion of its entire capital and surplus that its property and assets in this state bears to all its property and assets wherever located."

Held the tax was a privilege or occupation tax levied on the right to do business and that since the business was wholly interstate, the tax was a burden on interstate commerce.

In *International Paper Co. vs. Mass.*, 246 U. S. 135, relied upon by Appellant, the state levied an excise tax as a condition of admitting a foreign corporation to do business in the state, based on the amount of its authorized capital stock without limit.

Held that as applied to a foreign corporation the bulk of whose capital was employed outside the state and in interstate commerce, the tax was a burden on interstate commerce and void.

In *Helson vs. Kentucky*, 279 U. S., 245, the question was as to whether the State of Kentucky could collect a tax based on sale or use of gasoline in the state from the operators of a ferry boat across the boundary waters between Kentucky

and Illinois when the gasoline so used was purchased in Illinois.

Held that tax could not be collected.

In *Pierce Oil Company vs. Hopkins*, 264 U. S. 137, a state statute of Arkansas required dealers in gasoline to collect one cent in addition to the purchase price on all gasoline to be used on the highways and pay it into the public treasury. It was claimed the statute violated the due process clause of the Fourteenth Amendment and was void for uncertainty. It was held that the statute was valid.

In *Texas Company vs. Brown*, 258 U. S. 466, the validity of the Georgia state inspection laws with reference to certain petroleum products was involved. It was held that a state within its powers in requiring inspection of inflammable petroleum products within its borders even though in interstate commerce, if the fee charged was reasonably comparable to the expense involved and that as to products which had come to rest in the state, the state had the power to make the inspection fee a revenue measure.

Askern vs. Continental Oil Company, 252 U. S. 444, was an appeal from an interlocutory order in the same case as *Bowman vs. Continental Oil Co. supra*, and involves the same statute.

Standard Oil Co. vs. Graves, 249 U. S. 389, involved the validity of a state inspection statute. It was held that since the inspection fee exceeded the cost of inspection the act was void since it applied to products in interstate commerce.

Sonneborn Bros. vs. Cureton, 262 U. S. 506, involved the validity of an occupation tax levied against wholesalers of gasoline measured by the amount of sales.

Held valid as to all sales for delivery in the state, even sale in original package made after it came to rest in the taxing state.

Brown vs. Maryland, 7 U. S., 262, held that a statute imposing an occupation tax on a person engaged in importing foreign goods for sale in original package was void as a burden to interstate commerce.

Pierce Oil Co. vs. Hopkins, 282 Fed. 253, is the same case as the one with like title decided by the Supreme Court of the United States and reported in 264 U. S. 137.

In *Central Transfer Co. vs. Commercial Oil Co.*, 45 Fed. (2d) 400, decided by the United States District Court of Missouri, the question was whether the State of Missouri could levy a tax as against motor vehicle fuel purchased by complainant in Missouri for use in interstate commerce. It was held that the tax could be imposed.

None of the cases are authority for the proposition for which they are cited by Appellant, that the enforcement of the motor vehicle fuel tax laws like those of the State of Iowa imposes taxes which are a condition precedent to the right of a distributor to engage in interstate commerce. On the contrary, those cases cited which deal with the proposition at all, even remotely, sustain the right of the State of Iowa

to enforce its motor vehicle fuel tax laws. *East Ohio Gas Co. vs. Tax Commission*, 283 U. S. 465, *Pierce Oil Co. vs. Hopkins*, 264 U. S. 137, *Texas Co. vs. Brown*, 258 U. S. 466, *Bowman vs. Continental Oil Co.*, 256 U. S. 642, *Sonneborn Bros. vs. Cureton*, 262 U. S. 506, and *Central Transfer Co. vs. Commercial Oil Co.*, 45 Fed. (2d) 400, are the only cases cited which deal with the specific questions involved in the case at bar and they are all in complete harmony with the contention of Appellees herein.

Counsel for Appellant devote a considerable portion of their argument (commencing on page 55) to an attempt to demonstrate that a provision such as that contained in the Iowa statute requiring retail sellers of motor vehicle fuel to post a placard advising the public that the price includes the motor vehicle fuel license fees payable to the State of Iowa, does not change a tax levied as an occupation tax into a consumption tax levied against consumers. It is not necessary to quarrel with any of the cases cited by Appellant on that proposition. And it may be conceded that such a provision alone is not sufficient to transform what is otherwise clearly an occupation tax levied against persons engaged in a certain occupation for the privilege of engaging in that occupation into a consumers tax levied on the use and consumption of certain products. But attention is called in this connection to the fact that the Iowa statute does not levy the tax against the occupation as a tax on the privilege of engaging in business as a distributor but upon the use of the product, and the user is made liable for its payment. See Section 5093-a1.

Without taking the space to analyze each of Appellant's cases, it will be sufficient to refer to only one to illustrate

the point we are attempting to make. The first case cited by Appellant on this point is *Central Transfer Co. vs. Commercial Oil Co.*, 45 Fed. (2d) 403. The statute there imposing the tax reads as follows:

> "Every dealer shall for the year 1925, and each year thereafter, when engaged in such business in this state, pay to the state treasurer an amount equal to two cents for each gallon of motor vehicle fuels sold or distributed by such dealer in this state during each year."

That was held to be an occupation tax, levied against dealers for the privilege of engaging in that business. It could hardly be held to be anything else unless its clear language were to be ignored. But that holding has no reference to a case where the tax is levied as it is in Section 5093-a1 of the Iowa statutes on the use of the product. The language of that statute is as follows:

> "A license fee * * * is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid."

That levy is made on consumption. And none of these cases cited by Appellant aid its contention that it should be construed as something else. They are all cases where the levy was made against the privilege of carrying on the business of selling motor vehicle fuel.

The case at bar is ruled at this point by *Gregg Dyeing Co. vs. Query*, 286 U. S. 472, 76 L. ed. 1232, where, although

the dealer paid the tax to the state, the levy was on the use and this Court held it was a consumption tax, and that the burden rested on the consumer although not paid by him directly.

The fact that some one other than the one against whom the tax is levied may under some circumstances be required to pay it does not change the nature of the tax. The collection of taxes at the source has many advantages which are coming to be more widely recognized, and such a method of collection is free from constitutional objection. A typical example is the collection from a corporation of taxes levied against its stockholders.

> See *City National Bank vs. Kentucky*, 217 U. S. 443;
> *Clement National Bank vs. Vermont*, 231 U. S., 120
> *Pierce Oil Corporation vs. Hopkins*, 284 U. S. 137.

But it is said by Appellant that there is no provision in the statute for the distributor reimbursing himself by collecting the amount of the tax from the purchaser to whom he sells. It may not direct him to do it in just that language. But it does say to him that he must post a price placard where he sells his motor vehicle fuel advising the purchaser that the price he is paying includes the license fees. In other words, the seller must advise the purchaser when the sale is made that he is collecting the license fees. The difference between this and a direction to collect it is merely one of form rather than substance. And since this Court looks to the substance rather than the shadow (*International Paper Co. vs. Mass.* 246 U. S. 135) the distinction will hardly be held to be material, especially in view of the fact that the tax is

levied against the user, (Section 5093-a1) and the further fact that the user is given a refund of the amount of tax *paid by him* where the product is used for some purpose other than the operation of a motor vehicle upon the public highways.

What has heretofore been said disposes also of the contention of Appellant that the law is void and contravenes provisions of both the state and federal constitution in levying a tax for other than public purposes and for the benefit of a class of people, namely, those obtaining refunds. That contention rests entirely upon the proposition that the tax is an occupation tax levied against the dealer. It fails entirely when applied to a case where the tax is levied against the user. And since the policy of the law is to collect the tax only on the motor vehicle fuel used on the highways for the purpose of raising funds to improve the highways, there can be no objection to refunding to users the amount of the tax paid by them on motor vehicle fuel not used to propel motor vehicles on the highways.

VI.

THERE IS NO DISCRIMINATION UNDER THE IOWA STATUTE BETWEEN MOTOR VEHICLE FUEL IMPORTED INTO THE STATE AND MOTOR VEHICLE FUEL MANUFACTURED OR COMPOUNDED WITHIN THE STATE, AND IF THERE WAS COMPLAINANT IS IN NO POSITION TO RAISE THAT QUESTION.

a. TAX LEVIED AGAINST ALL MOTOR VEHICLE FUEL.

Appellant makes the further claim that the Iowa statutes discriminate between motor vehicle fuel which is imported and motor vehicle fuel which is produced within the state; and require distributors to pay the license fees only on imported motor vehicle fuel and make no provision for the payment of the license fees on motor vehicle fuel produced within the state. It is claimed that while imported motor vehicle fuel is taxed, motor vehicle fuel produced within the state is not taxed and a burden is thereby placed on interstate commerce. This contention cannot be sustained either by the language of the act or by the manner in which it is being enforced. It should at all times, of course, be kept in mind that no motor vehicle fuel is produced in the State of Iowa, no petroleum products are produced within the State and all motor vehicle fuel which is used in the state must come into the state in some form from outside, and the machinery which the law sets up for the enforcement of the tax was obviously set up with that fact in mind. However, the tax is specifically levied against all motor vehicle fuel used in the state without reference to its place of origin, and every person using motor vehicle fuel is made liable for the payment of the tax if it has not been previously paid.

For the convenience of the Court we set up the section which imposes the tax in full, as follows:

> "5093-a1. Amount of fee. A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable

for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided."

Section 5093-a2 defines a distributor as

"Any person who brings into the state or produces, refines, manufactures or compounds within the state any motor vehicle fuel used within the state or sold or otherwise disposed of by him within the state for use in the state."

Certainly there is no discrimination here. But it is urged by complainant that a distributor is required to pay the tax only upon motor vehicle fuel which he imports. It should be borne in mind, however, in connection with this claim that he is required to report not only motor vehicle fuel but also any "substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter," so that the provisions with reference to the reporting and payment to the state by the distributor applies equally to motor vehicle fuel which is brought in from outside the state and motor vehicle fuel which is manufactured or compounded within the state from materials brought in from outside the state. It is submitted that this includes all the motor vehicle fuel in Iowa, but if by any chance there should be other

motor vehicle fuel produced in Iowa that is manufactured from domestic products and used in this state, it would still be liable for the payment of the tax. The most that could possibly be said would be that while distributors are required to pay this tax on all motor vehicle fuel used in Iowa which is brought in from outside the state, either in its finished state or as raw material, under the provisions of Section 5093-a5,

the user under the provisions of Section 5093-a1 would be required to pay the tax on any other possible motor vehicle fuel so that the tax would be levied and payable to the State of Iowa in both cases.

The case at bar is clearly ruled at this point and at several other points raised by Appellant by the decision of this Court in the case of *Gregg Dyeing Co. vs. Query*, 286 U. S. 472, 76 L. ed. 1232. In that case a state statute required a payment of six cents per gallon from each person

> "who shall import into this state from any other state or foreign country"

any gasoline or like product of petroleum which is intended to be stored or used for consumption in the state. The act was assailed on the ground that it imposed a burden on an importer for the privilege of importing gasoline into the state. What was said by the Court, speaking through Chief Justice Hughes, in that case is so decisive of many of the questions raised by Appellant in this case that we quote at length from the opinion:

> "As to interstate commerce, the questions are (1) whether the Act as applied by the state Court imposes a direct burden upon that commerce, and (2) whether, although the subject of the tax would otherwise be within the power of the State, the tax is invalid because it creates an unconstitutional discrimination against transactions in interstate commerce.
>
> "As to the first question, we are not concerned with what the tax is called, but with what the statute does. It imposes an exaction with respect to gasoline purchased in

other states and brought into South Carolina and there placed by appellants in storage for future use within the State. By the terms of the Act, as construed by the state Court and applied to these appellants, interstate commerce in relation to the subject of the tax has ended. The gasoline has come to rest within the State, having been placed in appellants' storage tanks and added to appellants' property kept for local purposes. In such circumstances the State has the authority 'to tax the products of their storage or sale.' *Texas Co. vs. Brown*, 258 U. S. 466, 478, 66 L. ed. 721, 727, 42 S. Ct. 375; *Sonneborn Bros. vs. Curetón* (*Sonneborn Bros. vs. Keeling*) 262 U. S. 506, 519, 520, 67 L. ed. 1095, 1102, 43 S. Ct. 643; *Hart Refineries vs. Harmon*, 278 U. S. 499, 501, 502, 73 L. ed. 475-477, 49 S. Ct. 188. Not only may local sales of gasoline thus brought into the State be taxed, but its use as well. This was specifically determined in *Bowman vs. Continental Oil Co.* 256 U. S. 642, 648, 649, 65 L. ed. 1139, 1145, 41 S. Ct. 606. See *Hart Refineries vs. Harmon*, 278 U. S. 499, 73 L. ed. 475, 49 S. Ct. 188, supra; *George E. Breece Lumber Co. vs. Asplund*, 283 U. S. 788, 75 L. ed. 1415, 51 S. Ct. 352. There is an exception in the case of a tax directly on use in interstate commerce as on use in interstate transportation. *Helson vs. Kentucky*, 279 U. S. 245, 252, 73 L. ed. 683, 687, 49 S. Ct. 279; *Eastern Air Transport vs. South Carolina Tax Commission*, decided March 14, 1932 (285 U. S. 147, ante, 673, 52 S. Ct. 340). In view of these well established principles, we find no ground for concluding that the State could not impose the tax with respect to the gasoline of appellants which was kept within the State for use in their local enterprises. As the Court said, in *Hart Refineries vs. Harmon*, 278 U. S. 499, 73 L. ed. 475, 49 S. Ct. 188, supra, interstate transportation having ended, the taxing power of the State in respect of the commodity may, so far as the commerce clause of the Federal Constitution is concerned, 'be exerted in any way which the State's constitution and laws permit'. This, of course, is on the assumption that the tax does not discriminate against the commodity because of its origin in another State.

"The state Court answered the contention as to discrimination against interstate commerce by referring to other statutes of the State imposing a tax upon the sale and use of gasoline within the State. The state Court said that the Act in question 'taxes all gasoline stored for use and consumption upon which a like tax has not been paid under other statutes. By the kindred Acts all users are taxed.' But appellants question the right to invoke other statutes to support the validity of the Act assailed. To stand the test of constitutionality, they say, the Act must be constitutional 'within its four corners' that is, considered by itself. This argument is without merit. The question of constitutional validity is not to be determed by artificial standards. What is required is that state action, whether through one agency or another, or through one enactment or more than one, shall be consistent with the restrictions of the Federal Constitution. There is no demand in that Constitution that the State shall put its requirements in any one statute. It may distribute them as it sees fit, if the result, taken in its totality, is within the State's constitutional power. When the Supreme Court of the State has held that two or more statutes must be taken together, we accept that conclusion as if written into the statutes themselves. *Herbert vs. Louisiana*, 272 U. S. 312, 317, 71 L. ed. 270, 273, 48 A. L. R. 1102, 47 S. Ct. 103. See *Lindsley vs. Natural Carbonic Gas Co.* 220 U. S. 61, 73, 55 L. ed. 369, 375, 31 S. Ct. 337, Ann. Cas. 1912C, 160

"Reading together the statutes with respect to gasoline taxes, the state Court took the view that as the gasoline tax with respect to sales within the State, the burden actually rests upon the consumer, although not placed upon the consumer directly. No reason is found to challenge this view. *Texas Co. vs. Brown* (258 U. S. 479, 66 L. ed. 727, 42 S. Ct. 375) supra; *Panhandle Oil Co. vs. Knox*, 277 U. S. 218, 222, 72 L. ed. 857, 858, 56 A. L. R. 583, 48 S. Ct. 451; *Indian Mohorcycle Co. vs. United States*, 283 U. S. 578, 579, 75 L. ed. 1282, 1283, 51 S. Ct. 601. So far as dealers in gasoline within the State are concerned, there appears to be no ground for

appellants' claim of discrimination. The point with respect to appellants is that they are not dealers but users, consumers of gasoline in their business. They are required to pay the tax with respect to the gasoline they keep for such use and consumption within the State. As to such gasoline, they pay precisely the same amount per gallon as other consumers within the State are in effect required to pay through the tax on the dealers from whom such consumers buy. Discrimination is asserted in relation to manufacturers who produce gasoline within the State and consume it in their enterprises. Appellants have directed particular attention to the case of a refining company which produces gasoline in South Carolina and consumes gasoline in its business and also sells it within the State. The state Court, construing the applicable statute, has held that in such a case the producing company is taxed with respect to the gasoline it uses as well as with respect to the gasoline it sells. The decision is unequivocal that 'all oil companies in South Carolina are required to pay and do pay the tax upon any gasoline they sell and all that they use in South Carolina.' With respect, then, to the gasoline used by appellants in their business, there is in this aspect no discrimination against them because their gasoline has its origin in another state, as others either buying or producing gasoline within the state pay the tax at the same rate in relation to their consumption.

"Discrimination, like interstate commerce itself, is a practical conception. We must deal in this matter, as in others, with substantial distinctions and real injuries. *Shaffer vs. Carter*, 252 U. S. 37, 55, 64 L. ed. 445, 457, 40 S. Ct. 221. Appellants attack upon the tax comes to this, in the last analysis, that the tax in their case is laid with respect to the gasoline they have bought outside the State and keep in storage for use and consumption in their business, whereas others are taxed, not with respect to the gasoline they keep in store for use and consumption, but for the gasoline they use and consume. But appellants have admitted, as the state Court has said, that 'the only kind of storage affected' is that for the

purpose of use and consumption. In this view the state Court found no distinction of substance with respect to the practical operation of the taxing statutes in pari materia, as all in like case, appellants and others who use gasoline in their business enterprises, pay the same amount on the gasoline they consume. Appellants had the burden of showing an injurious discrimination against them because they bought their gasoline outside the State. This burden they have not sustained. They have failed to show that whatever distinction there existed in form, there was any substantial discrimination in fact.

"The same considerations, with respect to discrimination, apply to the claim that the statute in question violates the equal protection clause of the 14th Amendment. The statement of this Court in *General American Tank Car Corp. vs. Day*, 270 U. S. 367, 373, 70 L. ed. 635, 638, 46 S. Ct. 234, is apposite: 'In determining whether there is a denial of equal protection of the laws by such taxation we must look to the fairness and reasonableness of its purposes and practical operation, rather than to minute differences between its application in practice and the application of the taxing statute or statutes to which it is complementary."

It will be noted that the act assailed in the case from which the above quotation is made was one which required payments to be made only by persons who imported, but that other statutes required payment by users of gasoline produced within the state and that because of that fact there was no burden created on the products imported into the state. The same situation exists in the case at bar as heretofore pointed out, although as a matter of fact there is no motor vehicle fuel produced in Iowa as there was in South Carolina.

It will be noted further that the Court holds the tax to be in reality a consumers tax and that the burden rests on the consumer although not paid by the consumer directly. And by the same token the Iowa motor vehicle fuel tax is in reality a consumers tax although initially paid by the distributor.

b. APPELLANT CANNOT RAISE THE QUESTION OF DISCRIMINATION.

Appellant was unable to show at the trial any such discrimination as it attempts to complain of on this appeal. The most that it attempted was to show that some motor vehicle fuels were being produced in Iowa by means of blending or compounding but it was revealed that the State of Iowa had a suit against such persons for the collection of the license fee and under the provisions of Section 5093-a5 persons bringing into the state materials to be used in manufacturing or compounding motor vehicle fuels are under the same duty to report and pay the tax on said products as they are on motor vehicle fuel itself, so that certainly there can be no discrimination in that respect.

That there are no motor vehicle fuels produced in Iowa in the sense that there are no oil wells in the state and no petroleum products originating in the state, was established without any controversy at the trial, and among the findings of the Court is the following:

"No gasoline has ever been produced or refined in Iowa

except that refined by the Mona Motor Oil Company at Carter Lake, Iowa, prior to April first, 1932."

Transcript, p. 87.

It thus appears that the only refining ever done in Iowa was done by the Appellant in this case so that if there were any possible discrimination under the provisions of the Iowa statute in favor of motor vehicle fuel produced within the state as against motor vehicle fuel imported from outside the state, that discrimination is in favor of Appellant.

It is well settled that a person in order to be in a position to complain of discrimination must belong to the class discriminated against. See *Cronin vs. Adams*, 192 U. S. 108; *McKinney vs. State*, 30 Pac. 293; *Chadwick vs. Kelly*, 187 U. S. 540.

The motor vehicle fuel license fees which Appellant is seeking to have the State of Iowa restrained from collecting are on motor vehicle fuel refined in Iowa, and Appellant is the only one who ever refined motor vehicle fuel in Iowa. It cannot complain that the law discriminates against it by not taxing motor vehicle fuel refined in Iowa because if such discrimination existed it would be the beneficiary and the sole beneficiary.

VII.

THE APPELLANT IS ESTOPPED FROM QUESTIONING THE CONSTITUTIONALITY OF THE IOWA STATUTES IMPOSING MOTOR VEHICLE FUEL LICENSE FEES.

Appellant is estopped to raise the question of the constitutionality of the motor vehicle fuel tax laws of the State of Iowa. The record in this case shows without any controversy that the Appellant applied for a permit to engage in business as a distributor under the motor vehicle fuel tax laws of the State of Iowa and put up the necessary security and paid the tax monthly for a period of years without in any way questioning the validity of the tax. The record further shows that during that period the state or some of its municipal subdivisions issued some one hundred million dollars worth of bonds in anticipation of their payment by the revenues to be derived from this tax, and it is conceded that the Appellant knew that these obligations were being contracted in anticipation of their payment in that manner and during all that time raised no question about the validity of the act, and that this continued until it was discovered that Appellant was shipping gasoline as lubricating oil and thus seeking to avoid the payment of the tax. It is suggested that this course of conduct on the part of Appellant is sufficient to estop the Appellant from now questioning the validity of the law.

There is even a stronger reason why Appellant is estopped in this case from seeking the injunction for which it prays in this case. It was established in the trial and found as one of the facts by the Court that the forty carloads of gasoline which were shipped as lubricating oil and dumped into the gasoline storage tanks of the Appellant at Council Bluffs, Iowa, were sold in Iowa at service stations where the Appellant kept on display a placard advising the purchasers of motor vehicle fuel that the purchase price they were paying included the motor vehicle fuel license fee. And it was like-

wise stipulated and found as a fact by the Court that the price paid by the purchasers for that motor vehicle fuel was the same as that paid by other purchasers on fuel which included the tax. In other words, the Appellant collected from the purchasers of that gasoline a three cent license fee on each gallon at the time it was sold and the Appelllant still holds that money obtained by it in pursuance of the very statute that it is now seeking to have declared unconstitutional. In other words, the Appellant used the machinery of this Iowa statute, and the placard which the statute prescribes shall be maintained at its service stations, as a means of obtaining three cents per gallon in addition to the purchase price from each purchaser of motor vehicle fuel, and it is in no position to now claim that the statute under which it procured the money is unconstitutional and thus be permitted to retain it, and the granting of the injunction for which Appellant prays in this case would have that effect. That one can estop himself from questioning the constitutionality of a law is well settled.

See Note 19, Ann. Cas. 175

It would be hard to imagine circumstances more completely estopping one from questioning the constitutionality of the law than those which exist in this case as against the Appellant who is seeking to retain funds which it was enabled to collect by virtue of the provisions of the identical law that it is now seeking to have declared unconstitutional.

CONCLUSION

By way of conclusion and summary, it is the contention of Appellees that this suit is not maintainable in equity under the circumstances in this case, and that Appellant is in no position to raise the objections which it has attempted to raise against the constitutionality of the statutes of Iowa imposing motor vehicle fuel taxes. Moreover, if the question of the constitutionality of the Iowa statutes in the respects complained of by Appellant were properly before the Court, no other conclusion would be possible than that said statutes do not violate the Constitution of the United States.

The power of a state to tax is absolute except as limited by the provisions of the Constitution of the United States. A state may not, under the guise of taxation, attempt to regulate interstate commerce or impose any burden upon that commerce.

It is claimed that the motor vehicle fuel tax laws of the State of Iowa burden interstate commerce. A critical examination of those laws demonstrate that they do not impose any tax upon motor vehicle fuel until after it comes to rest in the state; that they impose no burden upon motor vehicle fuel sold for shipment outside the state, and that they impose no burden upon or interference with a person engaged in the business of carrying on interstate commerce in motor vehicle fuels. And further, that the laws of the State of Iowa operate equally upon motor vehicle fuel brought into the state from outside the state and motor vehicle fuel produced within the state. Under these circumstances, it can hardly be

claimed that any burden is imposed upon interstate commerce, especially, when it is kept in mind that the effect of the operation of state taxing laws on interstate commerce must be something more than incidental and must be substantial before the Court will interfere with their enforcement, and when it is further kept in mind that this Court said in *Gregg Dyeing Company vs. Query*, 286 U. S., 472, that

> "We must deal in this matter, as in others, with substantial distinctions and real injuries."

and further that Appellants

> "have failed to show that whatever distinction there exists in form there was any substantial discrimination in fact."

The motor vehicle fuel tax laws of the State of Iowa, by their plain provisions and method of enforcement, impose a tax upon the use of motor vehicle fuel to operate motor vehicles upon the highways of the state for the purpose of raising revenues for the improvement of said highways. And while the tax is levied upon all of the fuels, refunds are permitted to those who use the fuel for some purpose other than the operation of motor vehicles on the highways. The law imposes a tax on a purely domestic business and no effort is made under the terms of the law or in the method of its administration to interfere with commerce between the states or to in any way burden such commerce, and the statutes imposing the tax, therefore, are not unconstitutional

as in conflict with the commerce clause of the Federal Constitution.

Respectfully submitted,

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APPENDIX
CHAPTER 251-A1
MOTOR VEHICLE FUEL TAX

5093-a1. Amount of fee.
5093-a2. Definition of terms.
5093-a3. Sale price placard—misdemeanor—penalty.
5093-a4. Certificate—license.
5093-c2. Distributor—requirements.
5093-a5. Reports—remittances—rebate—penalties.
5093-b1. Tank car reports—inspection of books.
5093-a6. Books open to inspection.
5093-a7. Misdemeanor—penalty.
5093-a8. Reimbursement—procedure—false statement.
5093-a9. Distribution of proceeds.
5093-a10. Refunds quarterly.
5093-a11. Employees—appropriation.
5093-a12. Act separable.

5093-a1. Amount of fee. A license fee of two cents per gallon or fraction of a gallon is hereby imposed on all motor vehicle fuel used or otherwise disposed of in this state for any purpose whatsoever. Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid. License fees shall be collected and disposed of in the manner hereinafter provided.

Additional fee of one cent, Section 4755-b38.

5093-a2. Definition of terms. The term "distributor" as used in this chapter shall mean any person who brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel to be used within the state or sold or otherwise disposed of by him within the state for use in the state. Provided, how-

ever, a person coming into the state traveling by motor vehicle may transport, for his own use, in the ordinary motor vehicle fuel tank attached to and forming a part of such motor vehicle, not more than twenty gallons of motor vehicle fuel without being considered a distributor.
The term "person" includes individual, partnership, corporation and association.
The term "treasurer" means the treasurer of the State of Iowa.

"Motor vehicle fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose, except the products commonly known as kerosene and/or distillate or petroleum products of lower gravity (Baume scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel.

5093-a3. Sale price placard — misdemeanor — penalty. Any person who sells or offers for sale at retail motor vehicle fuel in this state, shall keep posted in a conspicuous place, most accessible to the public, at his place of business, a placard showing the total sale price per gallon including license fee, of all grades of motor vehicle fuel sold, said placard to have printed thereon the words "state license fee included."

When quantity discounts or rebates are allowed, such facts shall be shown on the placard in the manner designated by the treasurer of state in regulations promulgated by him. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days.

5093-a4. Certificate—license. Each distributor now engaged in business as herein defined, shall within thirty

days after this chapter becomes effective, and every distributor desiring to engage in such business shall, before beginning the sale or manufacture of motor vehicle fuel in this state, file a duly acknowledged certificate with the treasurer of state ~~on forms~~ prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the state of Iowa, and the principal place of business of such distributor. If such distributor is a firm or copartnership, the certificate shall also contain the names and addresses of the several persons constituting same, and if a corporation or municipal subdivision, the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general or managing agent and attorney in fact.

Each distributor now engaged in business as herein defined, shall, within sixty days after this chapter becomes effective, and any person or persons desiring to engage in such business shall, before beginning the manufacture or sale of motor vehicle fuel within the state, procure a license from the treasurer of state permitting said distributor to transact said business within the state of Iowa, The treasurer of state, upon application of any person or persons who has filed the required certificate, shall issue such person or persons a license as licensed distributor permitting such person or persons to continue or engage in business as a licensed distributor in the state of Iowa. It shall be unlawful for any distributor to continue or to engage in or to transact the business of a distributor without first having procured a license as required in this section.

5093-2c. Distributor—requirements. Before any distributor shall engage in business as defined in this chapter, he shall first file with the treasurer of state a statement showing financial responsibility satisfactory to said department, or a corporate surety bond payable to the state of Iowa in the penal sum of one thousand dollars, conditioned that said distributor will pay to the state of

Iowa any and all fees required by the law. Said bond, or financial statement, shall be approved by the treasurer of state. No license shall be issued unless the bond, or financial statement, required herein is attached to and delivered to the treasurer of state with the application for said license. If any distributor now engaged in business fails to file the bond, or financial statement, required by this section within thirty days after the effective date thereof, his license shall be revoked.

5093-a5. Reports—remittances—rebates—penalties. On or before the twentieth day of each calendar month each distributor of motor vehicle fuel shall file in the office of the treasurer of state, at Des Moines, Iowa, a duly acknowledged report on forms prescribed and furnished by said treasurer, showing the total number of gallons of motor vehicle fuel and/or of any substance or material imported into the state for the purpose of manufacturing, mixing, blending or compounding motor vehicle fuels as defined in this chapter imported by him during the preceding calendar month, the date of receipt, unloading point, tank car identification and invoiced gallonage of each and every tank car or other receptacle in which motor vehicle fuel is imported into the state of Iowa. If no importations are made for the preceding calendar month, a report shall be made to that effect on the forms prescribed herein, and in the same manner. At the same time he shall remit to the treasurer the amount of the license fee for such preceding month; provided, however, that in computing said amount a deduction of three per cent of the invoiced gallonage imported may be made for evaporation and loss.

If, after the prescribed license fees are so remitted and paid, any motor vehicle fuel in the possession of a licensed distributor is destroyed by fire, lightning, storm or accident not caused by the fault of such distributor or any employee thereof, before being sold or used by him, upon proper application therefor and proof of such destruction or loss satisfactory to the treasurer of state, the

said treasurer is authorized to certify to the amount of the license fees so paid thereon to the auditor of state as a refund. The auditor of state shall issue his warrant drawn on the motor vehicle fuel fund in payment thereof and the same shall be paid in the same manner and from the same fund as those refunds authorized in Section 5093-a8.

If any distributor of motor vehicle fuel shall fail to remit on or before the twentieth of each month to the treasurer of state to cover the license fees due on that date, a penalty of ten per cent of the amount thereof shall immediately accrue and become due and payable when such license fees are paid or collected. If any such distributor shall fail to pay such license fees and penalities within ten days after date due, the attorney general shall bring appropriate action for the recovery of such license fees and penalty; and in addition whenever any licensed distributor fails to render the prescribed reports, renders a false report to the treasurer, or fails to pay the license fee due within the prescribed time, the treasurer of state may revoke the license of such distributor, and any such licnse so revoked shall not be renewed unless the treasurer of state is satisfied that the applicant therefor will in the future comply with the requirements of this chapter. Neither this act (42GA, ch 248) nor any of its provisions shall apply to foreign or interstate commerce.

5093-b1. Tank car reports—inspection of books. Every railroad company, or other person, firm or corporation transporting motor vehicle fuel in tank cars or other receptacles from without the state consigned and delivered to any point within the state shall, through its local agent or agents, on or before the tenth of each calendar month, forward to the treasurer of state a report of forms furnished by said treasurer, for each station or place of destination, showing the name of the railroad or other carrier, the date of unloading and identification of each tank car or other conveyor of motor vehicle fuel received at the station or place during the preceding calendar month, the name of the consignor, the name of

the consignee, the number of gallons of motor vehicle fuel and/or of any substance or material imported into the state for the purpose of manufacturing, mixing blending or compounding motor vehicle fuels as defined in this chapter. The books, records and reports of each railroad or other carrier pertaining to the transportation and delivery of motor vehicle fuel as herein defined shall be subject to inspection during ordinary business hours by the treasurer or his representatives.

5093-a6. Books open to inspection. The books, records, papers, receipts, invoices and equipment of any distributor which pertain to the sale of motor vehicle fuel shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives, but any information gained by the treasurer of state or such representative by such investigation, shall be confidential and any person divulging such information shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding one thousand dollars.

5093-a7. Misdemeanor—penalty. Any distributor, railroad or transportation company or agent of a railroad or transportation company who shall fail to make, or refuse to make the reports or certificates to the treasurer as herein prescribed, or shall refuse to permit the treasurer to examine the books, records, papers, receipts, invoices, or equipment of such distributor pertaining to the sale of motor vehicle fuel or who shall make any incomplete false or fraudulent return hereunder, or shall in any manner violate the provisions of Sections 5093-a4, 5093-a5, and 5093-b1 hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. If a distributor is a corporation and fails to comply with the provisions of this chapter, each principal officer thereof shall be deemed guilty of a misdemeanor and shall each be subject to punishment therefor.

5093-a8. Reimbursement—procedure—false statement. Any person who shall buy or use any motor vehicle fuel for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, motor vehicles, trucks and tractors owned and operated by the state of Iowa, or by a municipality for municipal purposes within the state, or who shall purchase or use any motor vehicle fuel for cleaning or dyeing, or for any other commercial use except for propelling motor vehicles operated in whole or in part upon the public highways of the state or upon the streets of any city or town in the state, shall be reimbursed and repaid the amount of such license fee paid by him, upon presenting to the treasurer of state a statement accompanied by the original invoices showing such purchase which statement shall set forth the total amount of motor vehicle fuel so purchased, paid for and used by such consumer other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state or upon the streets of any city or town of this state and the treasurer of state shall, upon the presentation of such invoice, cause to be repaid from the funds collected hereunder, the amount of such license fee paid by such consumer on motor vehicle fuel used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursements as provided for in this chapter shall be filed with the treasurer of state on blank forms provided by him for that purpose within ninety days after the date on which such motor vehicle fuel shall have been purchased as shown by the invoice. Any person, firm, or corporation who shall make any false statement in connection with an application for refund of any money or license fee as herein provided or who shall collect or cause to be repaid to him or any person, any such fees, without being entitled to the same under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars.

5093-a9. Distribution of proceeds. License fees collected under the provisions of this chapter shall be distributed and disbursed as follows: One-third to the primary road fund. Two-thirds to the secondary road construction fund of the several counties of the state. The treasurer shall apportion said two-thirds portion among the counties of the state in the ratio that the area of each county bears to the total area of the state, and shall, on the first day of each month, remit to the treasurer of each county the amount apportioned to the secondary road construction fund of the county.

5093-a10. Refunds quarterly. The refunds provided for in Section 5093-a8 shall be made quarterly, by the treasurer of state. Claims for refunds shall be made on blanks provided by the treasurer of state and under such proofs under oath as he may prescribe. The auditor of state shall issue his warrants for refunds certified to him by the treasurer of state.

5093-a11. Employees—appropriation. The treasurer of state is authorized to employ such clerical and other help as may be needed to carry out the provisions of this chapter, the number and compensation of such employees to be fixed by the executive council.

There is hereby appropriated out of the money received under the provisions of this chapter sufficient funds to pay for help employed by the treasurer in enforcing the chapter and for making such refunds as are provided for herein, and to pay the cost of postage, equipment, supplies and printing, used by the department.

5093-a12. Act separable. If any part of this chapter is held to be unconstitutional or invalid by the Courts, such decision shall not affect the validity of the remaining portions of this chapter.

SUPREME COURT OF THE UNITED STATES.

No. 555.—October Term, 1933.

Monamotor Oil Company, Appellant, *vs.* Ray E. Johnson, Treasurer of the State of Iowa, et al.	Appeal from the District Court of the United States for the Southern District of Iowa.

[April 2, 1934.]

Mr. Justice Roberts delivered the opinion of the Court.

The appellant filed a bill in the District Court for Southern Iowa, seeking a declaration that the laws of Iowa laying a tax on motor vehicle fuel violate state and federal constitutional provisions, and an injunction against their enforcement by state officers. A temporary injunction issued, but a court of three judges, upon final hearing, dismissed the suit.[1] The case is here on direct appeal.

The general assembly of the State, in order to raise revenue for the improvement of highways, imposed a license fee of two cents per gallon on all motor vehicle fuel "used or otherwise disposed of in this state for any purpose whatsoever"; and directed that "Any person using motor vehicle fuel within the state shall be liable for the fee herein provided for unless the same shall have been previously paid."[2] By a later statute an additional license fee of one cent per gallon was imposed.[3] The law defines "distributor" as "any person who brings into the state or who produces, refines, manufactures or compounds within the state any motor vehicle fuel

[1] 3 F. Supp. 189.

[2] Laws of the 41st General Assembly, Chapter 6, Section 1, as amended by laws of 42d General Assembly, Chapter 248, Section 1; Code of Iowa of 1931, Chapter 251-A1, Section 5093-a1.

[3] "There is hereby levied on all motor vehicle fuel imported and used within this state a license fee of one cent per gallon, which shall be in addition to the license fee levied by chapter 251-A1. All of the provisions and conditions of said chapter 251-A1 relating to the levy, collection or payment of the license fee on motor vehicle fuel shall apply with equal force to the license fee levied herein. . . . ." Laws of the 42d General Assembly, Ch. 103, § 1; Code of Iowa, 1931, Chapter 241-B1, § 4755-b38.

to be used within the state or sold or otherwise disposed of by hi within the state for use in the state." "Person" is defined to i clude partnerships, corporations and associations. One who se at retail is required to keep posted in a public place a placa showing the total sale price per gallon, including license fe and to have printed on the placard the words "state license fee i cluded". It is declared unlawful to conduct the business of a di tributor unless a certificate giving certain information is filed wi the state treasurer and a license is procured permitting the co duct of that business. Every distributor is required on or befo the twentieth day of each calendar month to file with the sta treasurer a report showing the total number of gallons imported b him during the preceding calendar month, with details as to ea shipment, and at the same time to remit to the treasurer the amou of the license fee for such preceding month; he may, however, d duct three per cent. of the gallonage for evaporation and loss. after the fee is remitted the fuel is destroyed by casualty not du to the fault of the distributor, before being sold or used, a refu of the tax paid thereon is to be made by the state treasurer. Th act declares that its provisions are not to apply to foreign or inte state commerce. [As distributors import gasoline into Iowa f reshipment to other states, the state treasurer has, in the admini tration of the acts, permitted a deduction in the monthly reports any gasoline so sold and reshipped to points outside the state.]

There is provision that one using fuel purchased for a purpo other than for a motor vehicle may, upon making claim upon th state treasurer in proper form and in due time, obtain a refund the amount of the tax paid in respect of it.

A penalty of ten per cent. of the amount of the tax is impose upon a distributor who fails to remit on or before the twentieth the month following the importation. The attorney general is em powered to bring action on behalf of the state against any di tributor who is in default for thirty days in payment of tax. Th state treasurer is authorized to revoke the license of a distribut who fails to render the prescribed reports, or renders a false repo or fails to pay the license fee when due, and he need not renew t license until satisfied that the applicant will in future comply wi the law. Distributors are required to permit inspection of the books, records, papers, invoices and equipment. It is made a m demeanor for a distributor or any principal officer to refuse

submit the prescribed reports and certificates to the treasurer, or to refuse an examination of books, records and equipment by the treasurer or his representatives, or to violate other provisions.[4]

The appellant is an Arizona corporation whose business is the buying, manufacturing, blending and selling of gasoline and kindred products, including the importation into Iowa of gasoline by tank cars, trucks and other containers, for resale to consumers and to dealers who sell to consumers, and the exportation of gasoline to other states; the maintenance of storage facilities in Iowa, from which deliveries are made in that and other states, and the maintenance of a refinery at Carter Lake, Iowa, where gasoline is blended and compounded and shipped to points in Iowa and other states. Prior to April, 1932, gasoline was refined at this plant. The corporation maintains numerous service stations in Iowa which sell to consumers. Upon the filing of a certificate with the state treasurer the company received a distributor's license; and between May, 1927, and May, 1932, paid to the state treasurer monthly, in accordance with the reports rendered, many thousand dollars as license fees. There was included in the amount so reported and paid a tax at the rate of three cents per gallon on gasoline imported into Iowa and gasoline refined and manufactured at the refinery at Carter Lake. No question seems to have been raised as to the applicability and validity of the statute until about May, 1932. At that time a controversy arose out of the following facts:

Carter Lake, Iowa, where the appellant's refinery is located, now lies on the west shore of the Missouri River, not far from Omaha, Nebraska. It was originally on the east side of the river, the interstate boundary. By an avulsion the stream changed its course to the east of Carter Lake, but the old bed remained the interstate boundary. The refinery ships large quantities of gasoline to points in Nebraska and also to points in Iowa. The question arising whether the appellant should report gasoline which was ultimately distributed in Iowa upon its arrival at Carter Lake, or its manufacture there, or when it was shipped from Carter Lake to other points in Iowa, the state treasurer and the appellant agreed that importations into Carter Lake need not be treated as importations into Iowa, but when gasoline arriving at Carter Lake or there manufactured should be shipped to other points in Iowa, it should

[4]Code of Iowa, 1931, Chapter 251-A1. See also Section 4755-b38.

be treated as then imported into the state for the purpose of report and payment of the tax by the appellant. This arrangement was made for the convenience of the parties.

Prior to May, 1932, the appellant shipped forty tank cars of gasoline from the refinery at Carter Lake to destinations in Iowa for sale and use there. Its employees and agents altered the invoices and waybills on these shipments so as to show "gas-oil" instead of gasoline and omitted to report them to the state treasurer, or to pay tax upon them, as should have been done in accordance with the arrangement mentioned. When the state treasurer called appellant's attention to the falsification of its reports the representatives of the company for the first time asserted that as gasoline moving from Carter Lake to other points in Iowa had to pass through Nebraska the shipments were interstate, and a tax on them would be a burden upon interstate commerce. The state treasurer, having confirmed the facts by an audit of the company's books, caused the appellant and certain of its officers to be indicted for making a false return, procured the attorney general to bring a civil action against the appellant by attachment to recover the unpaid tax on gasoline imported and used within the state, and notified the appellant that he had revoked its license as a distributor. The individual defendants pleaded guilty and were fined, and the indictment was dismissed, as to the company. The civil suit was pending when the present bill was filed, asserting the invalidity of the law, and praying that the state treasurer and other officials be enjoined from interfering with the conduct of appellant's business as a distributor, from collecting the taxes imposed by the statutes, and from prosecuting the civil action in the state court.

The district court, whose jurisdiction was invoked by reason of diversity of citizenship as well as the alleged conflict of the state statutes and the federal constitution, dismissed the bill. The decision is challenged for several reasons, but we are of opinion that it was proper.

1. The amendatory act by which an additional tax of one cent per gallon was imposed is said to violate provisions of the Iowa constitution respecting the title and the substance of taxing laws. The district court examined these contentions and found them without merit. We concur in its conclusions.

2. There is no substance in the claim that the statutes impose a burden upon interstate commerce, contrary to the prohibition of Article I, Section 8 of the federal Constitution. The appellant insists that the tax is a direct tax on motor vehicle fuel imported. The court below concluded that the law laid an excise upon the use of fuel for the propulsion of vehicles on the highways of the state. The state officials have administered the tax on this theory. We think this the correct view. The levy is not on property but upon a specified use of property. *The Altitude Oil Co.* v. *People*, 70 Colo. 452; *Standard Oil Co. of Louisiana* v. *Brodie*, 153 Ark. 114. It is not laid upon the importer for the privilege of importing (compare *Brown* v. *Maryland*, 12 Wheat. 419; *Bowman* v. *Continental Oil Co.*, 256 U. S. 642, 647), but falls on the local use after interstate commerce has ended. Compare *Sonneborn Bros.* v. *Cureton*, 262 U. S. 506; *Nashville, C. & St. L. Ry. Co.* v. *Wallace*, 288 U. S. 249; *Edelman* v. *Boeing Air Transport, Inc.*, 289 U. S. 249. The statute in terms imposes the tax on motor vehicle fuel used or otherwise disposed of in the state. Instead of collecting the tax from the user through its own officers, the state makes the distributor its agent for that purpose. This is a common and entirely lawful arrangement. *Citizens National Bank* v. *Kentucky*, 217 U. S. 443, 454; *Pierce Oil Corporation* v. *Hopkins*, 264 U. S. 137; *Standard Oil Co. of Louisiana* v. *Brodie*, *supra*; *Standard Oil Co.* v. *Jones*, 48 S. D. 482. The distributor who reports the gasoline and pays the tax is required to pass the burden on to the consumer, who is advised that in addition to the price of the gasoline he is paying a license fee to the state. To prevent evasion the distributor must pay and pass on the tax on all gasoline imported or distributed, irrespective of its ultimate use; but as some purchasers employ the gasoline for a purpose other than the propulsion of a motor vehicle, and as the burden of the tax has been passed on to them as well as those who desire a motor fuel, provision is made for a refund to the former. Since the law declares that the levy is only upon use of motor vehicle fuel in the state, and the intent is not to affect interstate commerce, the state treasurer properly permits distributors to deduct as a credit from the gasoline returned as imported into the state in any calendar month, that which has been exported from the state by the distributor. Thus gasoline passing through the state to reach its ultimate destination is exempt. It is of course true that as the

report is required on the twentieth of the calendar month for tr
actions of the preceding month, there may at times be gasoline
ceived in the month covered by the report which has not been
ported by the twentieth of the succeeding month; but the
tributor is entitled to a credit for such exportation in his re
made in the next month, and the mere fact that he cannot c
an anticipatory credit for gasoline not yet exported, but inten
so to be, seems to us to be too slight a burden to be of any mon
or to raise a substantial constitutional question.

The appellant, however, says that the state officials have requ
it to report and to pay tax on shipments made from Oklah
direct to dealers in Iowa who are appellant's customers,
that in respect of such transactions the burden on interstate c
merce is obvious. But if the gasoline so imported is intende
be used in Iowa for motor vehicle fuel it is subject to the tax,
it is not so used by the appellant's customer, or by the purch
at retail, either may obtain a refund of the tax collected by
appellant and remitted to the state. The statute obviously was
intended to reach transactions in interstate commerce, but to
the use of motor fuel after it had come to rest in Iowa, and the
quirement that the appellant as the shipper into Iowa shall
agent of the state, report and pay the tax on the gasoline
coming into the state for use by others on whom the tax falls
poses no unconstitutional burden either upon interstate comm
or upon the appellant.

3. The method of imposition and collection of the tax does
deny the equal protection of the laws guaranteed by the
Amendment. Complaint is made of several features of the
which are said to create arbitrary discriminations. Appellant
says that as it must pay to the state a tax of three cents on e
gallon of gasoline imported, whereas the user who employs
gasoline purchased for some other purpose than motor fuel
obtain a refund of the tax paid in respect of the fluid so used,
law attempts to impose a tax on the distributor for the benefi
persons who buy or use gasoline for some purpose other than
operation of a motor vehicle on the highways, and that the resu
the imposition on the distributor of a tax for the benefit of
other class of persons.

The short answer to the contention is that the statutes prop
construed lay no tax whatever upon distributors, but make of t

mere collectors from users of motor vehicle fuel, and refund the tax only to that class of users upon whom no excise is intended to be laid. The distributor does not pay the tax; the user does. It cannot therefore be said that any tax is laid upon the appellant in case of another class of taxpayers.

The amendatory act, levying an additional cent per gallon, is said to discriminate against the appellant because if gasoline were distilled or manufactured in Iowa it would escape taxation, since the amendatory statute refers only to gasoline "imported and used" within the state. This statute is, however, an amendment or supplement to the earlier act taxing use and disposition of gasoline for motor fuel (see *State* v. *Northern Oil Co.*, 209 Iowa 980), embodies by reference provisions of the earlier law (see Note 3 *supra*) and, as the District Court held, is, therefore, to be construed to cover gasoline whether imported or manufactured within the state. It appears, moreover, that no gasoline is or has been distilled or manufactured in Iowa except that which was distilled or manufactured by appellant prior to April 1, 1932. Since that date the appellant has not distilled or manufactured gasoline within the state. The appellant is not in a position to complain of any alleged discrimination arising from the terms of the statute, since it has not sustained injury and none is threatened which can affect it.

It is asserted that naptha imported into Iowa and blended may escape the tax on the ground that it is not motor vehicle fuel imported into Iowa. The evidence, however, discloses that the officers charged with the administration of the law are insisting that the tax should be paid on naptha so imported and blended and in fact are now prosecuting a suit against another defendant on this theory. No reason appears why, even if such naptha were held free of tax, this would constitute an unfair discrimination against appellant, which is required to collect from users the tax on gasoline.

4. The revocation of the appellant's license by the state treasurer without notice and hearing did not deprive it of property without due process in violation of the XIV Amendment. Whether in other circumstances the license contemplated by the statutes under consideration might be considered property within the protection of the due process clause we need not determine. It is

sufficient in this case to advert to the undisputed facts disclosed by the record. The law imposes no penalty for conducting the business of a distributor without a license; the only penalties mentioned are for failure to report gasoline intended for use in the state, and to pay the tax. The state officers have not sought to prevent the appellant from continuing its business as a distributor, and have in this proceeding, both by answer and by evidence, avowed their purpose to take no further action against the appellant, either criminal or civil, until the conclusion of the civil suit now pending in a state court to recover the tax, the failure to pay which was the ground of revocation of the appellant's license. The State's officials are prosecuting the action as a test suit. There is therefore no threat of immediate harm as a result of the revocation of the license, and the action of the state treasurer in revoking it cannot affect the pending civil suit or any other action civil or criminal which may hereafter be brought.

5. By its bill the appellant asked an injunction against the further prosecution of the action at law in the state court for the failure to report and to pay tax on certain gasoline. The court below pointed out that section 265 of the Judicial Code (U. S. C. Tit. 28, § 379) forbids the granting of this prayer, and the appellant admitted at the bar that it could not have such relief and did not insist upon it.

We find no error in the decision of the district court, and its judgment must be

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.